REPORT

OF

THE COMMITTEE
TO STUDY THE QUESTION OF

LEGALISATION
OF
ABORTION

MINISTRY OF
HEALTH AND FAMILY PLANNING
(DEPARTMENT OF FAMILY PLANNING)
GOVERNMENT OF INDIA

REPORT
OF THE COMMITTEE ON
LEGALISATION
OF
ABORTION

CONTENTS

APPENDICES

BOMBAY,

December 30/31, 1966.

Dear Dr. Nayar,

The Report of the Committee to study the question of Legalisation of Abortion in the country appointed under the Government of India, Ministry of Health letter No. F.4-30/64-FP.II dated 29.9.1964 is submitted herewith.

Yours sincerely,

Shantilal H. Shah

(Shantilal H. Shah.)

Dr. Sushila Nayar,
Minister for Health and Family Planning,
Government of India,
New Delhi.

सत्यमेव जयते

COMMITTEE TO STUDY THE QUESTION OF LEGALISATION OF ABORTION

Chairman

Shri Shantilal H. Shah
Minister for Public Health, Law & Judiciary,
Maharashtra.

Members

Smt. Achama Mathai,
Chairman.
Central Social Welfare Board.

Smt. Avabai P. Wadia, President,
Family Planning Association of India.

Dr. (Mrs.) S. Bhatia, Chairman,
Association of Medical Women of India.

Smt. Masuma Begum,
President,
All India Women's Conference.

Shri Narendra Pragji Nathwani,
Advocate.

Dr. B.N. Purandare,
Hony. Secretary,
Federation of Obstetrical & Gynaecological Societies of India.

Dr. H.N. Shivapuri,
Representative,
Indian Medical Association.

Smt. Shyam Kumari Khan,
General Secretary,
Indian Council of Child Welfare.

Dr. V.N. Shirodkar,
Gynaecologist & Obstetrician.

Lt. Col. B.L. Raina,
Director,
Central Family Planning Institute,
New Delhi; *Member Secretary.*

सत्यमेव जयते

Chapter I

INTRODUCTION

1.1 Recently there has been a great deal of debate over the merits of liberalising laws on abortions. Among different cultures abortion has been practised for several reasons including birth control and by a variety of methods. There have been a number of myths, misconceptions and taboos. However, the crux of the problem seems to be that with the stringent law on abortions, the rate of maternal mortality resulting from illegal abortions has been considerable as abortions are being performed mostly by unqualified people under unhygienic conditions. There is no reliable information in India for the personal and family distress, subsequent ill-health, sterility and individual misery.

1.2 Statistics on abortion are difficult to evaluate, particularly because of the difficulty in collecting information. As it is still an illegal activity, no records are available of either the operation or its after-effects. Hence there are likely to be gross errors of estimation of the extent of mortality nd other untoward consequences of illegal abortions.

1.3 It is, therefore, difficult to get a realistic estimate of the ratio of induced abortions to spontaneous or therapeutic abortions. There seems to be a wide range of people, of varied qualifications conducting illegal abortions. There are reasons to believe that a wide range and variety of drugs (indigenous, herbal, chemical etc.) and practices are used.

1.4 The problem is complex and has legal, social economic, moral, medical and religious aspects. There are groups who consider that the problem of abortion should not be considered at all. There are others who feel that where a government has accepted the family planning programme it cannot ignore the fact that the law on abortion needs reform.

APPOINTMENT OF THE COMMITTEE:

1.5 The Central Family Planning Board at their sixteenth meeting held on the 25th August, 1964, expressed anxiety on the reported increase in the number of induced abortions under insanitary conditions affecting the health and life of the mother. The Board considered that the question of abortion is indeed complex which should be considered by a committee and recommended that a committee be formed to examine this question.

1.6 In pursuance of the recommendation of the Central Family Planning Board, Ministry of Health constituted a committee to study the question of legalisation of abortion in the country vide its letter No. FF.4-30/64-FP. II dated the 29th September, 1964, Appendix I. The composition of the committee was as under:-

1. Shri Shantilal Shah, Minister for Health, Law & Judiciary, Maharashtra.	Chairman
2. Representative of the Indian Medical Association.	Member
3. Representative of the Association of Medical Women in India	Member
4. Representative of the Federation of Gynaecologists & Obstetricians	Member
5. Representative of the Family Planning Association of India	Member
6. Representative of the All India Women's Conference.	Member
7. Representative of the Central Social Welfare Board	Member
8. Representative of the Indian Council of Child Welfare	Member
9. Lt. Col. B.L. Raina, Director, Central Family Planning Institute.	Member-Secretary

The following names were subsequently added to the committee on the recommendation of other members.

1. Dr. V.N. Shirodkar
2. Shri Narendra Pragji Nathwani

TERMS OF REFERENCE

1.7 The terms of reference of the Committee were to examine the question of legalisation of abortion in all its aspects - medical, social, legal and moral and to make recommendations.

1.8 The Committee was asked to submit its report by the 31st March, 1965. The date was later on extended to the 30th December, 1966, vide Ministry of Health letter No. F.4-38/64-FP.II, dated 27.9.1966.

PROGRAMMT OF WORK

1.9 The Committee decided to issue a questionnaire (Appendix II) which was sent to all Ministries of the Government of India, State Governments, Members of the Planning Commission, Members of the Parliament and State Assemblies and Central and State Family Planning Boards and to medical, social, legal, political and religious organisations throughout the country.

1.10 The Committee received 570 replies to the questionnaire and data has been analysed and presented in Apperdix III.

1.11 The Committee interviewed a few selected persons in varied fields at Delhi, Calcutta and Bombay. Summary of the opinions expressed by them is given in Section IX of Chapter II.

ACKNOWLEDGEMENT:

1.12 The Committee desires to take this opportunity to express its gratitude to all those who kindly responded to the questionnaire sent by the committee and gave evidence before the Committee in different places.

The Committee is grateful to the Member-Secretary Lieut-Colonel B.L. Raina and his staff for the able handling of all the organisational work of the meetings and the preparation of the report.

Chapter II

THE PROBLEM

2.1 Induced abortion as a means of terminating unwanted pregnancies seems to have existed ever since ancient times. But illegal abortion is probably the least explored area within the scope of public health. The problem of induced abortions has assumed global importance only in recent years.

2.2 The problem of induced abortions is a complex one involving various factors of significance both to the individual and to the society. True appreciation of the magnitude of the problem and its social consequences can be attempted by unfolding facts regarding trends in abortions in different countries, the proportion of abortions to live births, mortality and morbidity rates for legal and illegal abortions, the prevalence of abortions among the married and unmarried, the frequency with which women in different countries resort to induced abortions, cost of abortions, motivation for undergoing abortions etc. An attempt is made in the following paragraphs to examine the problem in its various aspects.

2.3 Analysis of trends in abortions in different countries reveal (a) the effect of legalization on the number of abortions performed (b) the ratio of abortions to live births, before and after legalization. Such trends have been analysed for those countries for which data are readily available. In most countries the immediate effect of the laws liberalising abortions has been to increase the overall incidence of legal abortions.

(i) The incidence of Abortions.

2.4 *In Hungary*, 'strong attempts were made in 1952-53 to enforce existing laws against criminal abortion. These efforts were followed by an increase in births in 1953 and 1954.

At about the same time medical boards for the authorization of therapeutic abortions were established. The growing number of legal abortions since 1953 indicates the progressive liberalization of the policy of these boards. After the decree of June 3, 1956 had introduced the termination of pregnancy on request, the number of legal abortions increased rapidly until in 1961 it reached 170,000 exceeding the number of live births by more than one-fifth.'[1] In 1962, in Hungary, the rate of live births was 12.9 per thousand, whereas the rate of legal abortions was 16.8 per thousand and of other abortions 3.4 per thousand. A drop of 4 per cent in the number of abortions has been reported in 1962. In 1964, there were 75 abortions per thousand women of reproductive age. A total of 218,700 legal abortions was registered in that year compared to 182,000 births or 165 abortions per hundred births.[2] According to another report in 1964, there were 184,400 legal abortions, exceeding the number of live births by almost two-fifths.

2.5 *In Czechoslovakia,* 'legalization of abortion for non-medical reasons was preceded by almost two years of public discussion. Moderate increases in therapeutic abortions in 1956 and 1957 reflect the changing attitude of the medical profession. Promulgation of a new and liberalized abortion law in December 1957 was followed by a steep rise in legal abortions in 1958, continuing a decelerating pace until 1961.'[3] In that year 94,300 legal abortions were registered. The trend was then reversed with a drop, to about 70,000 in 1963 followed by a renewed upward movement two years later. In 1965 there were 79,600 legal abortions, giving a ratio of 340 abortions per 1000 live births.

---

[1]C. Tietze. 'Induced abortion and sterilization as methods of fertility control'. *National Committee on Maternal Health* Inc. New York: 27: 1166, 1965.

[2]K.H. Mehlan, 'National Programs: the socialist countries of Europe', *Family Planning & Population Programs*. B. Berelson, K.Anderson, O. Harkavy, J. Maier, P. Mauldin, and S. Segal, eds. (Proceedings of the International Conference on Family Planning Programs, Geneva: Aug., 1965) Chicago: University of Chicago Press, 1966, pp. 207-26.

[3]Tietze, *op.cit.* - p.1167.

The abolition of fee for legal abortion and the liberalization of residence requirements in 1960 were followed by an increase in legal abortions and a decline in births in 1961. With the more restrictive law of 1962, in 1963 the number of live births increased by 24,000 and legal abortions declined by 20,000 while other hospital abortions increased by 300, and the number of deaths from abortion also increased.

2.6 *In Poland*, the incidence of legal abortion appears to have increased less steeply than elsewhere in Eastern Europe. However, reports for the first three months of 1960 indicate a doubling as compared with 1959.[4] From 1955 to 1961 the birth rate in Poland decreased from 29.1 per thousand to 20.7 per thousand, consequent upon the legalization of abortion.[5] In 1964 there were 177,500 legal abortions giving a ratio of 320 per 1000 live births.

2.7 *In Rumania*, after liberalization of the abortion law, the number of abortions increased sharply from 112,000 in 1958 to 219,100 in 1959 giving a ratio of 600 abortions per 1000 live births. 'Data from hospitals in urban areas, for 1957-62 reveal a three to four fold increase in abortions since 1958. The ratio of abortions to births in 1958 was 3.2:1 in the town of Arad and 3.5:1 in Pilantropia Hospital, Bucharest. In 1961, the comparable ratios were 7.4:1 and 13:1 respectively'.[6]

2.8 'Data on abortion for *Yugoslavia* as a whole are not available for any year after 1961. In Slovenia,* however in 1964 there were 9,392 legal and 5,993 other hospital abortions and 29,221 births. The number of abortions in Slovenia has remained constant since 1961. Nearly 95 per cent of the legal abortions were performed on social indications.....

---

[4] C. Tietze, and H. Lehfeldt, 'Legal abortion in Eastern Europe', *Journal of the American Medical Association*, 175:1150-51, 1961

[5] M.H. David, 'Abortion, contraception and population policy in Soviet Union,' *Demography*, 2:531-39, 1965.

[6] Tehlan, op. cit. p-222

*A province in Yugoslavia.

The ratio of abortions to births was 2.5:1.5 for female wage earners, 2.4:1.2 for female salaried employees and 2.8:2.7 for housewives'.[7]

2.9 Exact figures are not easily available regarding the incidence of abortions among women of reproductive age in the Soviet Union. However, Sadvokasova's article contains a statement concerning the relative incidence of abortion among working and non-working women from which a fair inference concerning the total incidence of abortion in the Soviet Union can be made. Sadvokasova asserts: 'In our country the overwhelming proportion of women of productive age are occupied in work. According to our data, the frequency of abortion among women of this group is considerably higher than among those not occupied in work (105.5 per thousand as against 41.5 per thousand).'[8] Assuming that these rates are representative, it can be calculated that the annual number of abortions in the Soviet Union would be somewhat higher than the number of live births. 'As of the 1959 census, there were 64,751,000 women of productive age, 16-54 years old, of these 49,094,000 were working and 15,657,000 were not working. The number of abortions in the 12 months period commencing from January 1959 can then be estimated to be 5,829,000. The corresponding number of births can be closely estimated to be 5,242,000-... Sadvokasova's survey did not include outside hospital cases.'[9] Thus the actual number of abortions, including those taking place outside of hospital might be 27 percent higher than calculated.

2.10 *In the German Democratic Republic* with relaxation of the abortion law in 1947, there was an increase in the number of legal abortions to 26,000 or 15 per 10,000 population. It was felt that indications for abortions could be restricted to medical and eugenic reasons only. The number of legal abortions declined subsequently to between 700 and 800 a year. In March 1965, the law was reinterpreted to include socio-medical and ethical indications. 'The estimated

---

[7] Mehlan, *op.cit.* pp. 222

[8] David, *op. cit.* pp-536

[9] *Idem.*

total number of abortions, including legal, spontaneous and illegal abortions, declined from 150,000 in 1950 to about 70,000-90,000 in 1962. In 1962 there was one abortion for every 3.7-5.0 births. During the past few years abortions have increased faster than births in the age groups upto 21 years, among the unmarried, among women with one child or none and in larger towns.'[10] According to a more recent estimate by Mehlan from 1959 through 1962, the number of authorized abortions in East Germany averaged 800 or 2.7 per 1000 live births.

In 1950 the number of therapeutic abortions in *the Federal Republic of Germany* stood at 9,500 or 12 per 1000 live births. Four years later these figures were halved. Tietze's estimate for 1959, based on Harmsen's reports from four states, suggests a total of 3100, or 3.3 per 1000 live births. Since then, the incidence of therapeutic abortion appears to have remained relatively constant.

2.11 'The number of legal abortions in Sweden increased from about 400 in 1939 to more than 6300 in 1951. During the same period the ratio of abortions per 1000 live births rose from 5 to 57. A parallel development occurred in Denmark, pushing up the number of legal abortions from about 500 in 1939 to 5400 in 1955 and the ratio per 1000 live births from 7 to 70.'[11]

2.12 'In recent years the upward trend in level abortions has been reversed. In Sweden the number declined to about 3,000 per year and in *Denmark* to less than 4000 per year. The current ratios per 1000 live births are of the order of 30 in Sweden (1963) and 50 in Denmark (1965).'[12] Partly this reversal of trend appears to reflect a more restrictive practice of authorization and partly this is associated with the

---

[10] Mehlan, *Loc.cit.*

[11] Tietze, op. cit., p. 1163.

[12] *Idem.*

spread of birth control, as revealed by a survey conducted in spring 1963 which suggested very wide practice of contraception.[13]

2.13 *In France*, therapeutic abortion is regulated by the code de la Sante publique. According to the decree of May 11, 1965, a physician may interrupt a pregnancy only if the 'life of the mother is gravely threatened'. He must consult two other doctors. Statistical information is virtually non-existent. *London Observer* surveys as quoted in the *Toronto Globe and Mail*, March 1, 1956, reports that the rate of abortion in France today is higher than the rate of births. These findings are according to the best medical and sociological estimates based on nation-wide surveys of hospital and police reports.

2.14 In the *United Kingdom* in 1937 an international committee was set up under the chairmanship of Lord Birkett, to enquire into the prevalence of abortion and what changes in the law are required. The estimated figure in 1937 was 60,000 illegal abortions a year. The figure given during the evidence of the Abortion Law Reform Association was 54,900. Perhaps today there might be about 100,000 illegal abortions a year.[14] A more recent estimate puts the figure as 250,000.[15]

'That therapeutic abortions are already being performed in increasing numbers is indicated by the fact that, in National Health Service Hospitals, there were approximately 1,600 recorded therapeutic abortion operations performed in 1958 and 2,800 in 1962.[16] The latter figure corresponds to a rate of 3.0 per thousand live births. A notable exception has been

---

[13] D. V. Glass, 'Western Europe,' *Family Planning & Population Programs*, B. Berelson, et. al., eds. (Proceedings of the International Conference on Family Planning Programs, Geneva: Aug., 1965) Chicago; University of Chicago Press, 1966, pp. 183-206.

[14] Lord Silkin: Abortion Bill Second Reading (Col-1139) Parliamentary debates (Husband) House of Lord-30th November, 1964.

[15] E. Chesser, quoted by M. Pearson in the *Study Telegraph*, January 30, 1966, p.25.

[16] ROYAL COLLEGE OF OBSTETRICIANS & GYNAECOLOGISTS, 'Legalised abortion: report by the Council of the Royal College of Obstetricians & Gynaecologists' *British Medical Journal*, 1, 880-884, 1966.

Sir Dugald Baird at the University of Aberdeen whose liberal views have raised the incidence of therapeutic abortion in that city to about 20 per 1000 live births.[17] Outside the National Health Service, an estimated 10,000 so-called 'west end legal' abortions are performed annually in private nursing homes or in their offices by a number of gynaecologists and surgeons in private practice, mainly in London.[18] As a result of hospital inpatient enquiry it is reckoned that during 1962 the total number of abortion cases treated in National Health Service hospitals was 72,400. Applications of the above estimate regarding aetiology leads to the conclusion that only approximately 14,600 of these abortions were procured by the patients themselves or by other persons. The remainder occurred naturally.[19]

2.15 As regards *U.S.A.*, Dr. Alan Guttmacher posed the problem as follows: 'the lay public has long been in clandestine rebellion against the highly restrictive abortion laws of the fifty states - laws no doubt suggested by doctors of medicine and divinity, written by lawyers and framed into statutes by legislators. The medical profession has zealously avoided giving either leadership or counsel to the rebellion. This is inspite of the fact that it recognizes that the antiquated abortion laws, like the prohibition laws of the twenties, can never work, for they are contrary to the desires and interests of the populace The medical profession is cognizant of the fact that the abortion racket is the third largest in America, involving as racketeers, in many instances, members of their own profession. Physicians witness daily inequities in the application for therapeutic abortion leading to a five to one ratio in favour of the private over the clinic patient and a virtual absence of legal abortions in Municipal Hospitals.'[20]

---

[17] D. BAIRD, 'A fifth freedom,' *British Medical Journal* 2:1141-48, 1964.

[18] P. PERRIS, *The Nameless: Abortion in Britain today*, London: Hutchinson & Co., 1966, pp 42-48.

[19] Royal College of Obstetricians & Gynaecologists, *Loc.cit.*

[20] A.F. Guttmacher, 'The United States Medical Profession and Family Planning,' *Family Planning & Population Programs*, B. Berelson, et al., eds. (Proceedings of the International Conference on Family Planning Programs, Geneva: Aug., 1965) Chicago: University of Chicago Press, 1966, pp. 445-63.

2.16 Several studies suggest that one out of every five pregnancies in U.S.A. terminates in criminal abortions. [21(a),(b),(c)]. A committee appointed by the conference on abortion at Arden House, New York in April 1955 concluded its report with the observation that a plausible estimate of the frequency of induced abortion in the United States could be as low as 200,000 and as high as 1,20,000 per year.[22]

In a study conducted by the Kinsey group, it was found that one of every 3 to 4 women having live births had one or more abortions.[23]

2.17 In New York City where all foetal deaths must be registered, the annual numbers of the therapeutic abortions have declined from about 700 in the middle 1940 to 284 in 1961. The ratio per 100 live births has fallen from 4.7 to 1.7. This overall trend conceals a sharp and continuing decline of traditionally medical indications and an increase in incidence of abortion on psychiatric grounds. The proportion of therapeutic abortions in New York City performed for Psychiatric indications has increased from about one tenth to one half.[24]

2.18 *Japan* has opened up a new chapter in the history of population control because of its association with 'induced abortion'. The Eugenic Protection Law enacted in 1948-49 legalized abortion for socio-medical reasons. Since then the number of induced abortions have increased enormously. The reported number of legal abortions rose from 246,000 in 1949 to 1,170,000 in 1955, corresponding to an annual rate of 13.1 abortions per 1000 population.[25] However, according to the calculation by Muramatsu, the number of unreported abortions may be as high as the number of reported ones.[26]

[21(a)] P.H. Bebhard, W.B. Penerary, C.E. Martin, C.V. Christenson, 'Pregnancy, birth & abortion', New York; Harper Brother, 1958. (b) F.J. Taussing, Abortions Spontaneous & Induced. St. Lousis: C.V. Mosby Co., 1936. (c) M.E. Kopp., Birth Control in Practice. New York. Mcbride & Co., 1934.

[22] Tietze, *Induced Abortion*, *op. cit.*, P. 1161.

[23] Bebhard, et al. loc. cit.

[24] Tietze, loc. cit.

[25] Tietze, *Ibid.*

[26] David, Loc. cit.

From 1955 onwards there has been a progressive decrease in the number of induced abortions reported according to the Eugenic Protection Law. In 1956 the reported number of induced abortions was 1,159,000, in 1957 it was 1,122,000, in 1958, 1,128,000, in 1959, 1,099,000 and in 1964 it had dropped down to 879,000. The latest figure available is for 1965 when the number of induced abortions is reported to be 843,000.[27] Since 1955 the number of abortions has declined by 16 per cent and the rate by 21 percent.[28] In Japan doctors are not required to put the names and addresses of the patients on record, but only report at the end of the month on the number of abortions they performed. Registered induced abortions reached a peak of 1.2 million in 1955 and since then registered a fall to under a million a year. Despite the legal latitude unregistered abortions were estimated to be 480,000 in 1955 and 700,000 in 1961. The number is believed to be under reported allegedly owing to the reluctance of physicians to pay income tax on their earning.

2.19 In *India* Anand[29] has made a study of the problems of abortion from clinico-epidemiological point of view among abortion cases admitted in Lady Hardinge Hospital, New Delhi. Part of the study is a record-analysis over a period of 8 years from 1956 to 1963, the other part pertains to an interview study of a random sample of 235 women admitted for abortion during 1962. The main findings of the study relevant to the present report are:

(1) Admission of abortion cases in the hospital shows a gradual increase in the 8 years.

In 1956 only 15.5 percent of the total admissions in maternity wards was for cases of abortion as against 31.8 per cent of those admitted in 1962. Other studies in India report figures of admission for abortions ranging from 4 to 11.09 percent.

---

[27] Selected Statistics indicating the Demographic situation of Japan - Oct. 1, 1966, Institute of Population Problems Japan.

[28] Tietze, *loc. cit.*

[29] D. ANAND, 'Clinico-Epidemiological study of abortions', LICENTIATE, 15; 7, 1965.

(2) Out of total of 1201 admissions in maternity wards in 1962, 682 were full term or premature deliveries. Thus for every three deliveries there was one abortion case.

(3) The ratio of abortions to pregnancies among the 110 women interviewed was 39.5 abortions for every 100 pregnancies.

(4) 80 percent of women were admitted with 2-4 months of pregnancy, 13 percent were less than two months pregnant and 7 percent for more than 4 months.

The other studies in India giving estimates on abortion are:

(a) A study of the 'reproductive pattern of Bengali women' which revealed a figure of 54 abortions per 1000 pregnancies.

(b) The 1961 Mysore survey which indicated a figure of 79 abortions per 1000 pregnancies in Bangalore city and 41 per 1000 in the rural area

(c) Data on abortion rate in India also comes from a study by Agarwala, though the context of the study is somewhat different. In a study of 8825 women attending 8 family planning clinics in Delhi during 1955-58, he found an average abortion rate of 18.82 for 'the contraceptive use period' as compared to 10.45 for 'the non-contraceptive use period.' These figures, of course, bear greater relevance to motivation in abortions.[80]

(d) In an analysis of the total figures for abortion in the last 3 years in the Safdarjung Hospital at New Delhi, Phatak reports a decrease in the number of abortions during the 3 years. It was 32 percent in 1962, 20 percent in 1963 and 16 percent in 1964 of the total number of women admitted in maternity ward.

(e) It has been observed from Gandhigram Studies (Madras) that among 100 conceptions 25 terminate as abortions (10 natural and 15 induced) and 2 still births.

---

[80] S.N. Agarwala, *Fertility Control through contraception*, New Delhi: Directorate General of Health Services, 1960.

Some guesses can be made on the magnitude of the problem. If it is assumed that for every 73 live births 25 abortions take place of which 15 are induced, the number of abortions annually in a 1000 population may be approximately 13 - 5 natural and 8 induced (corresponding to the estimated birth rate of 39). In a population of 500 million the number of abortions per year will be 6.5 million -2.6 million natural and 3.9 million induced. Assuming an average expenditure of Rs. 50/- per induced abortion, the annual expenditure on induced abortions may be Rs. 19.5 crores.

(ii) Mortality

2.20 High Mortality rates related to illegal abortions seems to be an important plea for the legalisation of abortions. The argument seems to rest on the fact that due to restrictive abortion laws women who do not want the pregnancy to continue will resort to means which are gravely damaging to their health, or even to their life. 'They take drugs and pills, which are calculated to end pregnancy; they insert things into the womb running a grave risk of serious injury.... where these methods are unsuccessful many of them resort to unqualified abortionists'.[21]

2.21 The postulated declines in criminal abortions as well as the fact that they have not been completely replaced by legal interruptions of pregnancy are both reflected by the trend of maternity deaths attributed to abortion in the countries where abortion is legalized. However, mortality associated with legal abortions are exceedingly low in Eastern European countries subsequent to the legalization of abortion.

2.22 In *Hungary* 'during the two year period 1952-53 a total of 164 deaths following abortions was reported Doubtless most of these deaths resulted from criminal abortions. By 1957-58 the total dropped to 87 fatal cases in all of which autopsy was performed. Criminal abortion was established as the cause of death in 61 cases, (59 sepsis, 2 haemorrhage)

[21] Lord Silkin - Abortion bill second reading (Col-1139) Parliamentary debates. (Hansard) p. 1141, 30th November, 1965.

and was suspected in 7 additional cases of sepsis. Only 4 deaths followed spontaneous abortion and 15 legal abortions.[82] In a study Hirschler reported 15 deaths following 269,000 abortions during the two year period 1957-58, giving a mortality rate of 6 per 100,000. More recent figures, reported by Szabady for 1960-61 point to an even lower mortality rate of 3 per 100,000 legal abortions based on 9 deaths in 332,000 cases.[83] Mehlan reports that for Hungary the number of deaths due to abortion was 85 in 1956 whereas it was only 24 in 1964.[84]

2.23 In *Czechoslovakia* reported deaths from criminal abortions dropped from about 100 during the period 1955-56 to 34 in 1958-59. However, in the year 1959-60, a mortality rate of 4 per 100,000 was achieved; there were 6 deaths among 167,000 legal abortions. In 1961, no deaths were reported.[85] According to Mehlan the decline is from 53 deaths in 1956 to 11 in 1962.[86]

2.24 In *Yugoslavia*, according to Mojic [87] 8 deaths occurred in 1960-61 among 177,000 legal abortions corresponding to a rate of less than 5 per 100,000 cases.

2.25 In *Poland* it has been reported that the number of deaths declined from 76 in 1956 to 20 in 1959. In *Bulgaria*, 67,000 abortions were done during the period 1957-58, but no deaths occurred as a result of it.

2.26 For the period 1953-57, in *Sweden* there were 14 deaths resulting from 21,803 abortions yielding a death rate of 64 per 100,000. In *Finland* for the period 1950-57, 18 deaths occurred out of 27,144 abortions giving a death rate of 66 per 100.000. For

---

[82] C. Tietze, and H. Lehfeldt, 'Legal abortion in Eastern Europe *Journal of American Medical Association*, 175:1149-54, 1961.

[83] Tietze, *Induced Abortion*, op. cit., p. 1167

[84] Mehlan, *loc. cit.*

[85] Tietze, *loc. cit.*

[86] Mehlan, *loc. cit.*

[87] Quoted by Tietze, *loc. cit.*

Denmark, during 1953-57, 23,666 abortions resulted in 16 deaths, the rate being 63 per 100,000. In the *German Democratic Republic* for the year 1948-50 for 28,775 abortions that were performed, there were 11 deaths and the rate was 38 per 100,000.[38A]

2.27 One may assume under-reporting for all statistics on deaths from criminal abortion in all countries and at all times.

The differences in mortality between the countries of Northern Europe and Eastern Europe seem to reflect primarily upon the restriction of legal abortion to the first three months of pregnancy except in cases involving medical indications and the permitted indications.

2.28 For *U.S.A.* the information on mortality associated with therapeutic abortion was obtained in New York City for 1943-47, during which period 3,592 abortions were reported, including 3,046 involving local residents. Among the latter 0.7 deaths were attributed to the operation yielding a rate of 230 per 100,000 abortions. These data pertain to over a decade back. Other sources suggest that out of a total of more than one million criminal abortions per year in U.S.A., nearly 5000 deaths occur. These data need to be interpreted in the light of the fact that medical indications for interruption of pregnancy tend to be more narrowly interpreted in U.S.A. than in Northern or Eastern Europe.

2.29 It has been reported that the proportion of maternal deaths due to abortions is 15 per cent in U.K.[39] According to Lord Silkin's statement in the House of Lords on the Abortion Bill: In London, in 1964, there were 50 deaths from abortions not carried out by doctors. According to the data furnished by the recent News letter of Abortion Law Reform Association the number of deaths following legal abortion in 1962, 1963 and 1964 have been 4, in each year, whereas for the same period, the number of deaths due to criminal abortions was 29, 21 and 24 respectively. For spontaneous

---

[38] K.H. Mehlan, 'Effects of legalisation of abortion', Family Planning News, 4: 5, 84, 1963.

[39] Manohar and Desai-'Opinion', September 28, 1965.

abortions for the same period it is 24, 24 and 22 respectively. However, the maternal death rate in child birth in 1962 was 32 per 100,000.[40]

According to the report of a London News Paper, in 1962 there were '135 maternal deaths certified as due to abortion. This excludes the mothers who died from complications resulting from attempted abortion and who were more kindly registered as septicaemia or pelvic perito-intis. More than half of the women who died had aborted themselves perhaps more, if all had been honest and about a quarter of the mothers who died had four or more children.'[41]

2.30 In 1949 the *Japan* Academy of Obstetricians and Gynaecologists reported 39,550 abortions as an outcome of which 87 women died.

2.31 Mortality due to abortions seems to be related to the stage of pregnancy at which abortion is performed. In *Czechoslovakia, Hungary* and *Bulgaria* the operation must be performed before the third month of pregnancy. 'About half of the fifteen deaths following legal abortions in Hungary during 1957-58 involved pregnancies of more than three months' gestation. (Hirchler). The mortality rate of these late abortions was, 300 per 100,000'.[42]

2.32 In *Denmark and Finland*, on the other hand, legal abortion is ordinarily permitted even during the fourth month and in Sweden in the fifth month. The procedures required for the authorization of legal abortion are somewhat time-consuming, especially in Sweden, where about 85 percent of all legal abortions are authorized by the Royal Medical Board in Stockholm, on the basis of written reports by physicians and social agencies throughout the country. Consequently a substantial proportion of legal abortions is performed after the third month - 35 percent in Sweden (1949) and 25 percent in Denmark during the two years 1955-57. These late abortions contribute heavily to the total number of deaths.[43]

---

[40] Alra News Letter -No. 14, 1966.

[41] *Guardian*, February 23, 1965.

[42] Tietze and Lehfeldt. *op. cit.* p. 1152.

[43] *Idem*.

The risk of operation increases with the month of pregnancy and is lower with a social indication than with a medical one and that, further more, mortality also decreases with increasing experience with this operation procedure.

2.33 Recent data on mortality rates due to induced abortions in India are not available, as induced abortion is still illegal. It may be assumed that many induced abortions are conducted by unqualified people and consequently high mortality rate prevails.

2.34 According to the vital statistics of *India* 1961 'abortions accounted for 5 - 10 percent of the group deaths of which two thirds to three fourth were with mention of sepsis.'[44] As per table 22(a) 'cause of death by age and sex certified in International Form', for Rajasthan for the year 1961 there were 11 deaths out of which four were without mention of sepsis or toxaemia. In Nagpur there were 2 and in Bombay 17. According to the same source (Table 24) showing proportionate deaths per thousand of total deaths in major groups according to Indian list of causes of death (Major Group XI) for 1961, the deaths due to abortion without mention of sepsis or toxaemia were 41 in Bombay, 18 in Rajasthan and 16 for Nagpur for the year 1960. Deaths due to abortion with sepsis of the same year were 99 for Bombay, 26 for Rajasthan and 63 for Nagpur for 1960, and 25 for 1961. The actual incidence is likely to be very much higher than reported.

(iii) Morbidity and complications

2.35 Those without specialist knowledge are influenced by a humanitarian attitude and tend to regard induction of abortion as a trivial operation free from risk. 'In fact even to the expert working in the best conditions the removal of an early pregnancy after dilating the cervix can be difficult and is not infrequently accompanied by serious complication. This is particularly true in the case of the woman pregnant for the first time... for women who have a serious

---

[44] Vital Statistics of India for 1961 - Registrar General of India, New Delhi, pp-LX.

medical indication for termination of pregnancy induction of abortion is extremely hazardous and its risks need to be weighted carefully against those involved in leaving the pregnancy undisturbed. Even for the relatively healthy women however the dangers are considerable'.[45]

2.36 According to the Report of the Royal College of Obstetricians & Gynaecologists (London) 'non fatal serious complications occur in not less than 3 percent of cases of legalized abortions induced by experts under modern conditions and morbidity rates as high as 15 percent are reported. Immediate complications include haemorrhage, rupture of the uterus, salpingitis, peritonitis, septicaemia, renal failure, thrombosis and embolism. Late sequelae such as menorrhagia, chronic pelvic infection and other conditions which may even require hysterectomy, are not uncommon. Sterility can also result, and to the young woman marrying subsequent to a premarital abortion, it is a personal tragedy... When wanted pregnancies occur following a previously induced abortion they are liable to be complicated by miscarriage, premature labour ruptured uterus, and other serious accidents'.[46]

2.37 Morbidity data pertaining to the hazards of repeated, induced abortion is reported from Hungary. There was a correlation between the frequency of induced abortions and proportion of premature births (Premature child is defined as a child whose birth weight is less than 2500 grams). The percentage of premature births seems to increase with the increase in mother's induced abortion history. According to the birth data from April 1964, the ratio of premature births among women who had no induced abortion was 10 percent, the same figure was 14 percent among those with one induced abortion, 16 percent after two induced abortions, and 21 percent after three or more induced abortions. In Budapest where the frequency of induced abortion is highest the frequency of premature births is very high. 'Thus the impact of premature birth on infant mortality and on the mental and physical development of the child is connected with

[45] Royal College of Obstetricians and Gynaecologists, *loc. cit.*
[46] *Idem.*

frequency of abortions. These relationships have not yet been studied in detail, but it is clear that induced abortion plays an important role in the development of a later child'.[47]

2.38 'In *France* Monsaingeon stated in 1945 that one fourth of deaths of all women was due to sequelae of criminal abortion. Out of 1000 women with abortion, 610 had complications and temporary or permanent sterility was found in 27 percent. Although such high figures of mortality and morbidity are no longer observed today, we must assume nevertheless that about 25 percent of abortions induced outside hospital show complications. Comparable statistics of early complications following legal abortions are available for a number of countries.'[48]

In 1958 in *Hungary*, perforation of uterus occurred in 0.17 cases out of 145,000 legal abortions and 37,000 hospital abortions and only 0.08 for spontaneous abortions. The figure for perforation of uterus for Bulgaria in 1958 was 0.16(based on 21.000 abortions) and 0.2 in German Democratic Republic for 1948-50 (28,775 cases). The figures for haemorrhage in Hungary, Bulgaria and German Democratic Republic for legal abortions was 0.16, 0.26, 0.6 respectively, whereas it was 4.48 in Hungary for spontaneous abortions. After a survey of such figures Mehlan states 'operations for induced abortions cannot be regarded as completely harmless, because some proportion of women are likely to be affected with physical disturbances or irregularities of some sort. Moreover, opinions against it arise from humanitarian stand-points... As regards sequelae, while many physicians cling to the belief that induced abortion, even under the most favourable conditions often produce sterility, this outcome is, in fact, comparatively rare.'[49]

---

[47] A. Klinger, 'Abortion Programs,' *Family Planning and Population Programs*, B. Berelson, et al., eds. (Proceedings of the International Conference on Family Planning Programs, Geneva: August., 1965) Chicago: University of Chicago Press, 1966, pp. 465-76.

[48] Mehlan, *Effects of* ..../*op. cit.* pp. 84-85.

[49] Mehlan, *Idem*.

2.39 'In a talk with more than 2000 women five years postabortum, Mehlan observed a secondary sterility of 2 percent. The women concerned were mainly 35 years of age and younger, who had an abortion for social indications. There was also a small number of psychic sequelae. Ten percent of the women with social indications regretted the abortion. Later examinations of 1,400 women in Japan made by Muramatsu, revealed that 50 percent of these women were either pregnant again 18 months post-abortion or had had another induced abortion.'[50] Though it is difficult to give authentic figures for morbidity for Japan as a whole, some idea is obtained from figures published by Koya in a small group of 1712 cases. Of these women 47.3 percent had post-operative complications, 45.9 percent after the first induced abortion, 54.5 percent after the 2nd and 3rd. This figure rises steeply after the 4th and 5th. 'The majority of recent follow-up investigations of those who had undergone legal abortion carried out mainly in Scandinavia and summarized by Lindahl, show an incidence of involuntary sterility of between 1 and 6 percent.'[51]

2.40 Some physicians have been concerned with possible psychological sequelae of legal abortion. The Royal College of Obstetricians & Gynaecologists in their meeting on 26th March, 1966 considered this issue and expressed their opinion as follows: 'Whilst the continuance of pregnancy can have a psychological rather than physical ill-effect, so can induced abortion. There are few women, no matter how desperate they may be to find themselves with an unwanted pregnancy, who do not have regrets at losing it. This fundamental reaction, governed by maternal instinct, is mollified if the woman realizes that abortion was essential to her life and health, but if the indication for the termination of pregnancy was flimsy and fleeting she may suffer from a sense of guilt for the rest of her life. The incidence of serious, permanent, psychiatric sequelae is variously reported as being between 9 and 59 percent.'[52]

---

50 Mehlan, *Idem.*

51 Mehlan, *Idem.*

52 Royal College of Obstetricians & Gynaecologists, *loc. cit.*

2.41 Although frequent mention of psychiatric illness following abortion is found in American medical literature, there has not been statistical documentation of such sequelae. Kummer reports that on a 'Preliminary survey by a group of American psychiatrists revealed that post-abortion psychiatric illness occurred either very rarely or not at all. Surveying foreign literature and communications with psychiatrists in other countries, particularly those in which more liberal attitudes prevailed tended to confirm the extreme rarity of post-abortion illness.[53] 'In Ekblad's carefully studied group of 479 cases from Stockholm one fourth reported mild or serious self-reproaches. However, a closer study of the case histories of these women shows that even if their subjective sufferings due to the abortion were severe from the psychiatric point of view, their depression in general must be designated as mild. It is rarely that the women's working capacity has been impaired or that they have needed to consult a doctor on account of their mental troubles-... Moreover, it is necessary to consider not only the possible emotional sequelae of legal abortion, but also the consequences of unwanted parenthood for mother and child, family and community.'[54]

(iv) Abortion and birth rates

2.42 Generally it has been claimed that abortion decreases the birth rate and thereby it is an answer to the problem of population control. This has been frequently used as an argument in favour of legalization of abortions. However, an objective assessment of the situation is possible when the effect of legalization of abortion on birth rates in different countries who have some years of experience with legalization of abortion is reviewed.

2.43 The spectacular achievement of Japan in reducing the birth rate by 50 percent within a decade is often quoted as an example of the consequences of legalizing abortions. In Japan the birth rate was halved from 34.3 in 1947 to 17.2 in 1957.

---

[53] J.M. Kummer, 'The Problem of abortion; *The Population Crisis*, Larry K.Y. Ng, ed., Bloomington: Indiana University Press, 1965, pp. 210-11.

[54] Tietze, *Induced Abortion*, op. cit. p. 1168.

2.44 A continuous decrease in birth rate is striking in all countries except in the Soviet Union, following legalisation of abortion and the relaxation of indications for abortions to include non-medical, socio-ecomomic reasons. In Hungary in 1961, there were 17 legal abortions per thousand of total populations compared with birth rate of only 14 per thousand. Although in Bulgaria, Czechoslovakia, and Poland in 1961 abortion rates were substantially less than the birth rate, they were still at very high levels.

In Bulgaria, the abortion rate was 8.7 per thousand population and the birth rate 17.4; in Czechoslovakia the abortion rate was 6.8 and the birth rate 15.8 and in Poland the abortion rate was 4.8 and the birth rate 20.7.[55]

2.45 In Bulgaria, Czechoslovakia, Hungary and Poland the legalization of abortion was accompanied by substantial declines in crude birth rates. From 1955 to 1961, the birth rate declined from 20 per thousand to 17.4 per thousand in Bulgaria, from 20.3 per thousand to 15.8 per thousand in Czechoslovakia; from 21.4 per thousand to 14.0 per thousand in Poland. Thus the legalization of abortion for socio-economic indications most probably had a profound effect on the birth rate of these countries.[56]

2.46 'If abortion rate in the Soviet Union were approximately as high as in the East European countries and if it had increased after legalization one would also expect a substantial decline in the birth rate in the Soviet Union in the six years following 1955. Such a decline did not however, occur. In 1955 the Soviet birth rate was 25.7 per thousand and in 1961, 23.8 per thousand. The decline experienced during this six year period was 7 percent of the 1955 birth rate. This decline was very slight compared with those experienced during the same time interval in Czechoslovakia, Hungary and Poland and was smaller even than the minimal 13 percent decline in the Bulgarian birth rate.'[57]

---

[55] C. Tietze, 'The demographic significance of legal abortion in Eastern Europe, *Demography*, 1: 121, 1964.

[56] Tietze, *Idem*.

[57] M.H. David, 'Abortion, contraception & population policy in the Soviet Union, 'Demography. 2: 531-39, 1965

2.47 'The decline in birth rates may be due to a decreasing number of women in the fertile age group, to the transition from a predominantly agricultural economy to an industrial economy, to urbanization, to an increasing number of professional women, to an increase in the cultural level.

The physiological capacity of the human population for procreating does not differ considerably from one period to another and if the structure of the population is not essentially altered, a decline in births must presumably be due to artificial barriers during procreation or birth.'[58] When considering the population structure of Hungary, Czechoslovakia, Poland, Bulgaria etc. the causes of decline in birth rate seem to lie more in the strong motivation people have for a small family. According to Miltenyi, women in Hungary aim at having one child only, or two children at the most; corresponding figures for Czechoslovakia are 2-3. Under changed conditions of society one can observe a high tendency to limit the number of children in all countries.[59]

2.49 Legalization of abortion favours this development. It is true that abortion is not the cause but the means of family planning but the ease with which it can be obtained can encourage the desire for it. The decline in birth cannot be considered separately from the number of legal abortions. The fact that 99 percent of all legal abortions in Hungary are performed before the third month of pregnancy must be welcomed from the medical point of view. From the standpoint of psychology, however, it must be taken as a proof of the weakening of psychological resistance against induced abortion. The steady increase in legal abortion can be traced to two components: (1) Those which take the place of delivery. (2) Those which replace criminal abortion.

2.50 However, data on live births and still births in the United Nations Demographic Year Book 1959 for the Eastern European countries for the period 1951 to 1959, seem to indicate increase in the totals of

---

[58] Mehlan, *Effects of* .... op. cit. p. 87.

[59] Mehlan, *Idem*.

births and abortions, after the legalization of abortion for non-medical reasons in Hungary, Czechoslovakia and Bulgaria. These increases reflect in part the more frequent hospitalization of cases of criminal abortion, 'but primarily the fact that any early termination of pregnancy makes it possible for the women to conceive again nine months to one year earlier than would have been the case if the pregnancy had been permitted to go to full term of this period, about six months correspond to the shorter pregnancy and the remainder to the shorter anovulatory period after abortion as compared with that following a birth. especially if the infant is nursed. Legalization, by increasing the total number of abortions, has thus resulted in an increased number of conceptions.'[60]

(v) Abortion as related to age & parity.

2.51 The influence of abortion on population growth can also be appraised in terms of the relationship between abortion and parity status and indirectly age of the women resorting to it. It is also interesting to note in various countries what is the modal age group of the women who resort to induced abortions. In the following paragraphs an attempt is made to reveal whatever figures are available.

2.52 In an extensive survey of 26,000 Soviet Women who underwent abortions, it was found that 'among persons requesting abortions who lived in urban areas, 10.2 percent were childless, 41.2 percent had one child, 32.1 percent two children, and 16.5 percent 3 children or more. Among those living in rural areas, 6.2 per cent were childless, 26.9 percent had one child, 30 percent two children and 36.9 three or more children. Thus the average number of children among the rural persons requesting abortion was considerably higher than among the urban. The median number of children borne by rural women was 2.06 and by urban women only 1.47.[61]

2.53 According to a U.S. study of 5,210 Baltimore women, the average number of children per patient was only 0.73 as compared to the 1.47 children per woman in the Soviet survey of the urban areas.[62]

---

[60] Tietze and Lehfeldt, *Legal abortion*, op.cit., p. 1151.

[61] David, op. cit. p. 534.

[62] David, op. cit. p. 535.

2.54 According to the Hungarian data the relatively high abortion rates are found amongst women 25-29 years old. By 1964 this age group had experienced 145 induced abortions per 1000 total women and 156 per 1000 married women. Rates were high among the 20-24 and 30-34 age groups. According to Miltenyi 'while only one sixth of the childless married women terminated their pregnancies by abortion (in most cases to postpone child birth) the ratio of abortion to pregnancies for those having one child was more than one half and those having two children more than three fourths. Of 100 women who had induced abortions in 1963, 56 had two or more children, 29 had one child and 15 had no children.'[83] It was also observed that the fertility of housewives was 86 percent higher than that of working women. According to the Czechoslovakian data of 1962, the highest frequency of abortions had been experienced among women in the age 25-34. The average age of women having legal abortions has remained at 30 years for the past 6 years.[84]

2.55 *In Yugoslavia* the modal age groups among those having abortions are 20-24 years and 25-29 years, with one fourth of abortions in each of these groups. Childless women made up about 11 percent of those having abortions; women with one or two children 55 percent with three or four children 27 percent and with five or more children 7 percent.[85]

2.56 According to data from Rumania, nearly 70 percent of those who had abortions were in the 20-29 years age group.[86]

2.57 Figures for India are available from D. Anand's[87] study at Lady Harding Hospital, New Delhi. In the analysis of 1908 cases spread over 8 years (1956-63) 47.5 percent of cases admitted for abortions were between 25-34 years of age. This trend is at variance with the studies of Mukherjee and Shah which show high percentage of cases in the age group 15-24 years. The trend in different countries seem

---

[83] Mehlan, *National Programs*, *op. cit.*, 218

[84] Mehlan, *op. cit.*, p. 221.

[85] Klinger, *loc. cit.*

[86] Mehlan, *National Programs*, *op. cit.*, p. 223.

[87] D. Anand, 'Clinico-Epidemiological study of abortion, Licentiate, 15:7, 205-14, 1965.

to be similar, namely the modal age of women seeking abortions seems to be between 25 and 34 years.

(vi) Marital Status & Abortions

2.58 There have been arguments that legalization of abortion will lead to loose sex morals. This argument implies that more and more unmarried people will resort to abortions to terminate illegitimate pregnancy. It is worthwhile examining available evidence on marital status of those who resort to abortions.

2.59 In a study by Gebhard[68] it was found that illegal abortion was more a problem of married women having several children, contrary to the popular notion that it mostly involves illegitimate pregnancy. The more pregnancies a woman had, the more likely she is to seek abortion. This agrees with the findings of Kopp[69] in her study done in 1934. A much higher rate of induced abortion in married women occurred at younger age and in later life.

2.60 In Czechoslovakia 'the proportion of married women among those having legal abortions declined from 86 percent in 1958 to 82 percent in 1962 and the proportion of house-wives also fell, while the proportion of unmarried women rose and proportion of working women increased from 50.6 percent in 1958 to 65.5 per cent in 1962.'[70]

2.61 In Hungary in 1957, 89 percent of the women undergoing legal abortions were married, 8 percent were single and 3 percent were divorced or widowed.[71] However, recently the increasing trend of induced abortions among young unmarried women is noteworthy. In 1964, when 32 per 1000 women aged 15-19 underwent induced abortion, nearly 7000 or 2 percent of the unmarried women under the age 20 resorted to interrupt pregnancy. Among married women of similar age the proportion was 12 percent. This seems to indicate that lack of knowledge of contraception causes a great

---

[68] Quoted in the article by Kummer in The *Population Crisis*, Larry K.V.Ng., ed., Bloomington. Indiana University Press, 1965, pp. 210-11.

[69] Kummer, *Idem*.

[70] Mehlan, *National Programs*, *op. cit.* p. 221,

[71] Tietze and Lehfeldt. *Legal abortion*, *op. cit.* p. 1150.

number of pregnancies and is therefore, responsible for a great number of induced abortions among young married girls.[72]

2.62 In a Soviet Survey involving 26,000 Russian women who had abortions the results of which were published in 1963, the overwhelming majority of the women having an abortion were married.[73] This statement can be compared with the limited available data concerning the marital status of those seeking illegal abortions in the United States. In a sample of 5,210 women seeking an illegal abortion in Baltimore 53 percent were married women.[74] Well over a half of the women who undergo an induced abortion may have no living children.

In *Yugoslavia*, of the women having legal abortions 78 percent were married, 16 percent unmarried and 6 percent widowed or divorced.

2.63 This seems to indicate that although, generally it is married women who resort to induced abortions, there seems to be an increasing trend among unmarried girls to resort to it. The causes may be several, and cannot entirely be attributed to legalization of abortions. It may be due to increased opportunities for contact with the opposite sex, changing ideas on sex and morals, a more permissive attitude among parents and society etc.

(vii) Repeated Abortions

2.64 It is interesting to study the off-expressed opinion that a woman who resorts to abortion once tends to do so several times. Repeated induced abortions can be a cause for chronic ill health. Hence this question needs to be examined carefully in the context of legalising abortions.

2.65 In *Hungary* the aborting women experiencing their third or higher order abortion increased from 25.5 percent in 1960 to 31.4 percent in 1964. These

---

[72] Klinger, *op. cit.* p. 473.

[73] David, *op. cit.* p. 534.

[74] Statement of Dr. G.L. Timanus in *Abortion in the United States*, Mary Calderone, editor, New York: Paul B. Heel. 1950. p. 60.

data suggest an increasing tendency among women who resort to this method of birth limitation in the first place to continue to rely on its use. Fifth and higher order abortions accounted for 7.5 percent of surgical induced abortion in 1964, as compared with 5.2 percent in 1960. Moreover, among the women aborting for the fifth or more time in 1964, 52 percent had also had an induced abortion the year before.[75]

2.66 In *Soviet Union*, according to the data of the investigation of 1958-59, 16 percent of the aborting women had more than one induced abortion in a year.[76]

2.67 In Koya's study of 1712 cases it was found that 57 percent had one abortion, 29 percent had 2 abortions, and 14 percent 3 or more. Some had 7 or 8.

2.68 In *Rumania*, women who applied for an abortion in Bucharest in 1961 already had an average of 3.9 legal abortions.

(viii) Motives for Seeking Abortion.

2.69 It is worthwhile analysing what motives impel a woman to seek abortions. The predominant motive may vary from culture to culture, depending upon the prevalent socio-economic, political and cultural factors.

2.70 In a survey carried out by the Mainchi News Papers (1959) 58.4 percent of woman who had experienced abortion gave the reason as contraceptive failure. In a similar survey in 1962, 54 percent of women who had taken recourse to abortion had been those who were not using contraceptives.

2.71 According to the practice in Hungary, the proportion of induced abortions performed for illness is relatively very low. In 1964, 96 percent were permitted on the basis of social reasons and only 4 percent for medical reasons. Bad dwelling accounted 1/6 and unfavourable marital or family status for another 10 percent in the first survey and 15 percent in the second.[77]

---

[75] Klinger, loc. cit.

[76] Klinger, Idem.

[77] Klinger, Idem.

2.72 In a similar survey of about 26.000 women in the Soviet Union in 1958-59, 1/3 said that they did not want to maintain their pregnancy. About 10 per cent accounted for such factors as uncertain marital circumstances, the difficulty of caring for the child, or the problems of bringing up a small child already born.

(IX) (a) Summery Statement Of Laws Regarding Abortion in Different Countries

2.73 Abortion is permitted on Medical Reasons - if due to woman's illness, physical defect or weakness. Child-birth will entail serious danger to her life in Denmark, Norway, Sweden, Federal Republic of Germany, France, U.K., Hungary, Yugoslavia, Rumania, Thailand, Japan, Cambodia, U.S.A., Cuba, Australia, Chile, Ethiopia, Kenya, Zanzibar and India. In some of these countries, abortion is permitted if child-birth will entail serious danger to her health also.

2.74 Abortion is permitted on Medico-social Reasons if due to a woman's conditions of life and other circumstances there is reason to assume that her physical or psychic strength will be seriously reduced through child birth and child care, in Denmark, Norway, Sweden, Hungary, Rumania, Japan.

2.75 Abortion is permitted for Humanitarian Reasons - if a woman has become pregnant as a result of rape, other criminal coercion or incestuous sexual intercourse or if she is insane or an imbecile, or under 15 years of age at the time of the fertilizing coercion in Denmark, Norway, Sweden, Hungary, Yugoslavia, Rumania, Japan, Cuba.

2.76 Abortion is permitted on Eugenic Reasons - if there is reason to assume that the woman or the father of the expected child will transmit to their off-spring hereditary insanity, imbecility, a serious disease or a serious physical handicap in Denmark, Norway, Sweden, Hungary, Yugoslavia, Rumania, Japan and Cuba.

2.77 Abortion is permitted practically voluntarily in Hungary, Rumania, U.S.S.R., Japan and China.

(b) Abortion Laws in India

2.78 In India, causing of miscarriage, injuries to unborn children, exposure of infants and concealment of births are offence under Indian Panal Code.

The extracts of Indian Panal Code regarding miscarriage injuries to unborn children, exposure of infants and concealment of births are given below:

2.79 *Causing Miscarriage:* Code 312 whoever voluntarily causes a woman with child to miscarry, shall, if miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both, an if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation: A woman who causes herself to miscarry, is within the meaning of this section.

2.80 *Causing Miscarriage without woman's consent:* Code 313 whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with (Imprisonment for life), or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

2.81 *Death caused with act done intent to cause miscarriage if not done without woman's consent. Code 314:* Whoever with intent to cause the miscarriage of a woman with child, does any act which causes the death of such, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine; and if the act is done without the consent of the woman shall be punished either with imprisonment for life or with the punishment above mentioned.

'Subs. by act 26 of 1955, S. 117 and Sch., for Transportation for life'.

Explanation: It is not essential to this offence that the offender should know that the act is likely to cause death.

2.82 *Act done with intent to prevent child being born alive or to cause it to die after birth. Code 315:* Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine or with both.

2.83 *Causing death of quick born child by act amounting to culpable homicide, Code 316:* Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, or with fine or with both.

ILLUSTRATION

2.84 A, knowing that he is likely to cause the death of a pregnant woman does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured but does not die, but the death of the unborn quick child with which she is pregnant is hereby caused. A is guilty of the offence defined in this Section.

2.85 *Exposure and abandonment of child under twelve years by parent or person having care of it, Code 317.* Whoever being the father or mother of a child under the age of twelve years or having the care of such child shall expose or leave child, in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine or with both.

Explanation: This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child dies in consequence of the exposure.

2.86 *Concealment of birth by secret disposal of dead body. Code 318.* Whoever, by secretly burning or

otherwise disposing of the dead body of a child whether such child dies before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

(X) Views Expressed by Persons Interviewed

2.87 The Committee interviewed several persons of repute in various fields such as law, medicine, social work etc. in order to get the benefit of their views on this complicated issue of legalisation of abortion. Interviews were held in Bombay, Delhi and Calcutta. In the following paragraphs an attempt has been made to bring out some of the points emerging from these interviews, which are directly related to the issues raised by questions in the questionnaire.

(1) Laws regarding abortion may be liberalized, but with proper safeguards.

(2) Abortion need not be permitted entirely on socio-economic grounds.

(3) Though it is desirable to liberalise abortions, the problem of availability of doctors and medical facilities remains to be solved.

(4) Abortion is not a method of population control.

(5) Abortion may be permitted in the following cases:

(i) Where pregnancy has occurred as a result of rape, incest or criminal coercion,

(ii) Where pregnancy has occurred in a widow, an unmarried girl or minor girl who will suffer the consequences of social stigma, if the pregnancy is allowed to continue,

(iii) Where there are hereditary diseases which are likely to be transmitted to the offspring,

(iv) Where the birth of a child causes serious physical or mental illness to the mother,

(v) Where the mother is imbecile or insane,

(vi) Where either one or both parents suffer from a contagious disease (like tuberculosis or leprosy) and it is not either possible or feasible to segregate the child from the parents,

(vii) Provided the case is examined by a board of three persons, the family physician, a gynaecologist and psychiatrist and there is concurrence of opinion among them regarding the necessity of abortion,

(viii) Provided abortion is performed under good, aseptic conditions, by a qualified doctor, and

(ix) Provided it is done before the completion of 13th week of pregnancy.

(6) The common opinion regarding cases where the woman has already three children and has conceived the fourth was that instead of seeking abortion, the woman should run the current pregnancy to full term, and get sterilized subsequently.

Chapter III

GENERAL APPRAISAL

3.1 The committee critically reviewed the problem of abortion in its various aspects. In the following paragraphs an attempt has been made to present this appraisal.

3.2 The provisions regarding abortion in the Indian Penal Code were enacted about a century ago, in keeping with the British Law on the subject. Abortion was made a crime - for which the mother as well as the abortionist could be punished in all cases except where it had to be induced in order to save the life of the mother.

3.3 This very strict law has, as any medical or social worker knows, been observed in the breach in a very large number of cases in the rural and urban areas, all over India. Whatever may be the moral and ethical feelings that are professed by society as a whole on the question of induced abortion, it is an incontrovertible fact that large numbers of mothers are prepared to risk their lives in an illegal abortion rather than carry that particular child to term. Furthermore, most of these mothers are married women, and under no particular necessity to conceal their pregnancy.

Health Hazards:

3.4 In recent years, when health services have expanded and hospitals are availed of to the fullest extent by all classes of society, doctors have been all too often confronted with gravely ill or dying pregnant women who, obviously to the doctor's eye, have tampered with the pregnant uterus with a view to causing an abortion and, while not fully succeeding in their purpose, have suffered very severe consequences. An abortion which could have been aseptically performed under proper medical supervision becomes, under these circumstances, a case where doctors have to fight for the life of the mother, expending the best available skill, drugs and equipment.

3.5 It is this sheer, futile wastage - of the mother's health, strength and perhaps life, and of medical skill and resources - that has made some doctors and lay people demand that the question of illegal abortion be reviewed as a whole. Deep compassion at the suffering involved and exasperation at the wastage that occurs have both played their part in such a demand.

3.6 On the other side lies the equally strong feeling, inbred into society, that abortion is immoral and amounts to the taking of life of a sentient being. That the penalty of immorality fell only on one party viz. the defenceless woman, was not considered to be a relevant factor. Nevertheless, the abhorrence at destroying a foetus is a genuinely strong and almost overriding feeling, and only exceptional cases may permit it to be ignored.

Never Knowledge:

3.7 However, the patterns of living are fast changing in many parts of the world, whether consciously or unconsciously, chiefly due to the great advances in scientific knowledge which have brought about a fuller understanding of natural phenomena, and of the processes of human functioning and health including the physiology of reproduction. In such a situation, some of the dread, or awe, and 'mystique', attached to these processes has given way to a more frank and rational appraisal of human needs and their function in society.

3.8 Also, when conscious planning for the betterment of the family, the society and the nation has become a recognised need, among other things the question of unwanted or uncontrolled pregnancies also must loom large and be regarded from different stand points.

3.9 In this connection too, therefore, the question of abortion becomes relevant, as an ex-post-facto and admittedly crude way of regulating the size of the family. It must be made quite clear at this point, however, that the words 'family planning' connote the control of conception which does not include abortion which takes place after conception. However, abortion also can be used as a means to control family size, as is being done currently in several countries, in which case, family planning or contraception, and abortion, are in two parallel categories, both of which can lead to population control.

3.10 Another clarification which may be made at this point is that the Indian Penal Code has already provided for legal abortion. What is to be considered by the present Committee is whether the circumstances under which legal abortions under the Indian Penal Code are allowed should be broadened and if so, to what extent. Therefore, its terms of reference are in effect to consider the rationalisation and not legalisation of abortion.

Experience of other countries:

3.11 Before going on to a consideration of the possible revision of the Indian law of abortion, the experience of other countries in this very complex and controversial sphere may be briefly recalled.

3.12 It may be observed that in all countries, the laws relating to abortion have taken into consideration at least four basic aspects, viz., ethical or religious beliefs, attitudes towards the family as a unit of society and the aims and ideals on which the social order is founded, protection of the unborn child and preservation of the mother's health and well being. In recent times, a fifth aspect has appeared in some cases where demographic needs have been taken into account.

3.13 Fundamentally, the need for a law on abortion rests on the instinctively felt humanitarian consideration and regard for protecting the helpless foetus and on the need to safeguard a pregnant woman. But a conflict is set up when, although social values uphold this stand, the individual woman (with or without the concurrence of her partner) feels that a particular pregnancy is intolerable and does not desire to bear the child. In such cases, her emotions and reasoning compellingly lead her to seek a way out by abortion, even when it is disallowed by the law. A point involved in such a situation is whether a woman should not be the master of her own body and decide the question of motherhood for herself. This has been one of the factors for instance, which has influenced the Soviet law permitting abortions.

3.14 Countries having abortion laws fall into three broad groups:

(a) Where abortion is allowed only on very strict medical indications as for example, in the case of the U.S.A., U.K., India, Holland, France, Turkey, Iran, the Federal Republic of Germany, Italy, etc.

(b) Where the indications have been liberalised to include medical, eugenic and even some social reasons as in the Scandinavian countries and in Switzerland, the German Democratic Republic, etc.

(c) Where the indications cover a wide range of medical, eugenic, social and economic reasons as in Japan, the U.S.S.R., Hungary, Poland, Bulgaria, Yugoslavia, etc.

3.15 It may be noted that in all the countries of Eastern Europe which fall under category (c) above,

abortion is not permitted when there are medical contra-indications such as acute or chronic inflammatory disease, or in pregnancies of more than 3 months duration, or where the previous induced abortion was performed less than 6 months ago. Also the operations must be done in properly staffed hospitals, by a physician. Two or three days in hospital followed by sick leave if the woman is working, are usual. Abortions done on medical grounds are free of charge; but these carried out on request or on social indications, have to be paid for except in Czechoslovakia. Every interruption of pregnancy has to be registered, in these countries.

3.16 Also, when abortion is desired for eugenic reasons, it is granted on condition that a sterilization also takes place and this is done either at the same time as the abortion, or before it. Sterilization is not required, however, where the defect that may be passed on to the child is not of a hereditary but of a congenital nature as, for instance, where the mother has had German measles or where the operation is hazardous to the mother's health, or where it becomes unnecessary e.g. she is permanently committed to an institution.

3.17 In Poland, it is now obligatory by law to teach contraception to a woman before an abortion is done.

3.18 Thus even in the broadest category of abortion laws there are legal restrictions. The new legislation in Eastern Europe has brought about great increases in the numbers of legal abortions even though pro-natalist policies are followed such as giving family allowances, for example, in Czechoslovakia and Hungary and the birth rate has consequently shown noticeable decline, ranging from 15% in the USSR to 40% in Hungary between the years 1950 and 1962.

Liberalisation to eliminate illegal abortion:

3.19 Countries which have decided to liberalise their laws of abortion have been moved to do so in order to eliminate the health hazards to women who would seek an abortion even if it is illegal and performed under appallingly unhygienic conditions.

3.20 Some of the countries, e.g. Scandinavia have provided as a part of the safeguards, for Commissions or pannels or Boards of gynaecologists and other experts, to whom the woman has to apply for the abortion. Thus it may happen that in cases where she is dissatisfied with their decision she may then resort to an abortion quietly or sometimes she does not wish her case to be brought up to the Commission, or she may seek it after the time limit has passed. In many such cases, an abortion takes place illegally, involving all the inherent risks. Being aware of the defects of these cumbersome procedures a Commission in Sweden is currently reported to be considering the changes that can be made.

3.21 The fact remains, therefore, that even with liberal legislation, illegal abortions have not been eliminated, except to a fair extent in countries where the medical Boards or Panels function more or less formally.

3.22 In Japan, when the practice of abortion was at its peak, there were nearly as many 'illegal' abortions as those registered, but the 'illegal' in this case had the connotation of being performed without the aid of physicians. For that country, the year 1955 showed the highest number of legal abortions numbering 1,170,100 whereas since then they have steadily declined until, in 1962, only 985,000 were registered. This decline is attributable, in good part, to an increase in the practice of contraception.

Mortality and Morbidity:

3.23 The inducting of abortion is not without risk and may sometime lead to serious complications, however, where abortions are permitted and carried out under proper medical care, the mortality rate of mothers is considerably reduced as compared to that prevalent when abortions are illegal. In Eastern Europe, mortality rates have been extremely low, varying from 3 to 6 per 100,000. In this sense, therefore legal abortion helps to lower the death rate.

3.24 As far as morbidity is concerned however, the deleterious effects on the mothers' health especially of repeated abortions are not entirely eliminated

through abortions being made legal. In countries where abortions are being legally induced under good medical conditions, the incidence of ill-health among the women has given rise to some anxiety and is one of the many reasons why contraception is by far the preferred method. It may be added that new techniques of abortion recently developed have reduced the morbidity considerably.

Contraception and Abortion

3.25 The interactions brought about by the practice of methods of contraception and of abortion form an interesting and vital study. It is often said that the spread of contraceptive practices will reduce the incidence of abortion, especially illegal abortion. On the other hand, those who oppose contraception (on the grounds of religious dogma) have been quick to point out that in countries where contraceptive knowledge is freely disseminated large-scale abortions still take place and in fact do so increasingly because those who fail with contraceptives, seek abortion. Countries like Japan, the U.K., the U.S.A. and other are mentioned in this connection.

3.26 There are two points viz. one, contraception does not prevent resort to abortion and two, where there is failure of contraception there is a tendency to resort to abortion.

3.27 Investigators who have closely studied this question have to point out several factors, however, in refutation of those who use this argument to oppose the spread of contraception. For instance, in the U.S.A., although contraceptive knowledge is widespread, it is estimated that nearly 20 per cent of pregnancies are aborted. This has to be done illegally since U.S.A. has a strict law against abortion. But as against this, it is reported that in France, for instance, where the dissemination of contraceptive knowledge is still illegal, as many as 40 to 50 per cent of pregnancies are estimated to be terminated by illegal abortion. The abortion rates in the Latin American countries where contraception has so far not been allowed generally are also so high that, inspite of religious dogma, public opinion is now moving in favour of spreading information about effective contraceptive methods.

3.28 The case of Japan also has been cited in this connection. The Eugenic Protection Law of 1948 permitted the spread of contraceptive knowledge, and also opened the door to the practice of abortion. The abortions soared, for obvious reasons. Japan was a devastated country as a result of the war, with less territory and more population than before and was facing an acute emergency. Abortion on a large scale was the quickest means available to overcome it.

3.29 A Japanese study has shown that of the women who had induced abortion, 39 per cent had not used contraceptives before, but 59 per cent had practiced contraception before seeking the abortion. A study carried out in 1959 noted that of 100 women for whom contraceptives failed, 29.9 percent had used the rhythm method, 4.7 per cent had used diaphragm and jelly, 8.5 per cent spermicidal jellies, 4.6 per cent spermicidal tablets and 37.7 per cent had used condoms*. The failures, therefore, can in large part be attributed to the use of defective contraceptive methods. This is borne out by the experience in some of the Catholic countries where family planning is sought to be practiced chiefly through the rhythm method and where the rate of illegal abortion is very high.

3.30 These and other examples lead to the inference that contraception does reduce the incidence of abortion substantially. It stands to reason that the more contraceptive precautions are effectively taken, the less number of unwanted pregnancies, which may possibly lead to abortion will arise.

New approaches to contraception and reduction of birth rates

3.31 In the last decade or two, countries which achieved a rapid reduction of their birth rates have resorted mainly through abortion, but are trying to

---

* H. Fabre Contraception versus Abortions proceedings of the Conference of the I.P.P.F. Europe and near East Region Excerpta Media.

* Tatsuo Honda, Chief of Research Department, Tokio Institute for research into Demographic Problems (Proceedings of the Conference of the I.P.P.F. Europe and near East Region, published by Excerpta Media).

change over to contraception as a better way of regulating family size although abortion is permitted side by side.

3.32 It may be noted that until very recently, contraceptive methods did not include sterilization, oral contraceptives and the intra-uterine contraceptive devices, to any extent. The nineteen sixties have ushered in the era of modern contraceptives in distinction to the older, 'conventional' methods, thus adding to the armamentarium available for the practice of family planning. And there is no doubt that medical research workers all over the world, stimulated by the world demographic crisis, will come up with scientific methods to control conception which will be a great advance, in many respects, on the hitherto approved methods. They should also help to render abortion by surgical interference on obsolete procedure.

3.33 . Thus, it is in this changing outlook of family planning methods that one must consider the role of abortion and whether it is an inevitable necessity in achieving a rapid reduction in the birth rate.

3.34 It is worth reiterating that family planning methods require a preventive frame of mind, a real interest and motivation on the part of the couple to avoid an unwanted pregnancy. In other words, they require fore thought and descipline. A population given to accepting each day as it comes and taking action only when driven to it, might adopt abortion more readily than family planning. This attitude of *laissez faire* permeates many aspects of life though it can hardly be considered to be, for that reason, an acceptable part of modern living.

3.35 The following points have therefore to be taken into consideration:

(a) the number of abortions performed would have to run into many millions per year, in order to make a dent in the birth rate.

(b) Where a couple are apathetic about planning their family they may not want even care to abort

inspite of having a large number of uncared-for children. This would seem to imply that, if abortion were to be used as a means of reducing the birth rate, it might be necessary not only to permit abortion legally but actually to advocate it to those with large families - a matter fraught with extreme social difficulties and distaste, generally due to religions and ethical sentiments.

(c) The minimum medical facilities properly equipped hospitals and a sufficient number of qualified physicians for carrying out a large number of abortions for demographic purposes, are not only presently lacking, but would not be available even in the foreseeable future.

(d) Medical facilities would be needed not only for performing the abortions, but for giving treatment to the women subsequently, for various morbid conditions.

(e) In the prevailing circumstances, legal abortions would not help to eliminate illegal operations, especially in the rural areas, since even expanded medical facilities could not reach out to that extent.

3.36 It is felt, therefore, that the legalising of abortions with a view to obtaining demographic results in unpractical and may even defeat the constructive and positive practice of family planning through contraception.

3.37 It must again be reiterated that, whatever the means adopted, a rapid reduction in the birth rate can only be achieved by creating a strong and emotionally deep motivation among the people to plan for small families. Japan is an illustration in point, for even if abortion was the major means by which this was done in Japan, it was actually the unswerving determination of the people to keep down their family size that brought about the needed result of reducing the birth rate by half within a period of ten years.

Abortion, the Family, and Society:

3.38 As was said earlier in this chapter, the question of abortion is not merely an adjunct of family planning or population control, but one that

stands by itself. Mothers resort to abortions for many reasons which may not be connected with the size of the family at all, and there is no doubt that some of these other reasons are good and valid, not only from the point of view of the individual but also from the stand point of society.

3.39 A law which rigidly prohibits something which nevertheless continues as a fairly widespread practice in the community is one that requires re-examination and change, if necessary. Law is the vehicle of society. Therefore, the question of how far permitted abortion can serve the wider purposes of the family and of society can bear dispassionate examination.

3.40 The family as a unit of society has always been safeguarded and even hedged in by laws, customs and conventions based on ethical precepts. But with different societies, the family norms are also different - for example, a matriarchal society has different standards from a patriarchal one, as regards marriage and motherhood. Also, society itself is an evolving and changing entity and with it, the family pattern also changes. In India at the present day, the changes are visible and radical. The whole process of 'development, with its stress on industrialisation and technological achievement for achieving better living standards, has entailed a new way of life affecting not only the economic or political sphere but the social sphere as well. It is not possible to try to utilise modern science and technology for the betterment of economic conditions for the masses and at the same time to preserve unchanged traditional ways of family organisation and life. The changed position of the woman and the child in the new society that is being built up, is also a very relevant factor, for they cannot be regarded any longer as subordinate with lesser rights. The equality of the sexes is being built into the foundations of modern society and the standards of care and nurture to be applied to children are also far advanced now.

These and other general trends form the background even to such a subject as the permissibility of induced abortion.

3.41 The grounds on which the inducing of an abortion has been permitted in some countries can be grouped as follows:-

(1) *Medical and therapeutic:* These grounds included cases where the pregnancy, if continued, might endanger a mother's life or seriously impair her health, physical or mental, or where there is likelihood of fatal abnormalities and risks.

(2) *Eugenic:* These are cases where the mother or father might transmit to the child some hereditary mental disease or deficiency or some serious illness or defect.

Eugenic grounds regard the problem from the standpoint of the child to be borne the handicaps and suffering in life which it would have to face, and the consequential burden on society.

The specific indications under both medical and eugenic ground must vary from time to time, as medical science progresses and tackles successfully various diseases or handicaps.

(3) *Humanitarian grounds:* These reflect the ideals, ethics, sensitivities of society. Most societies have a compassionate attitude towards the woman who is the victim of rape, for instance, though even there, societies which adopt a rigid attitude against abortion do not allow anything to be done to mitigate the wrong done to her, But humanitarian attitudes demand that the victim should be succoured. Thus a woman who is raped included an unmarried girl under the age of 16 who does not understand the meaning of 'consent', or one who is unable to assess the consequences of her action, or one who has been deprived of her freedom of action, and as a consequence becomes pregnant, can be legally permitted to undergo an abortion.

(4) *Socio-economic grounds:* A good deal of controversy has centred on the problem of permitting a woman to obtain an abortion because she seeks it on grounds of her social environmental or economic conditions. It is extremely difficult to define what constitutes real social or economic hardship and how

each individual case can fit in. The dividing line appears to be between genuine hardship and an attitude, on the part of the parents, of irresponsibility and desire to get out of what they feel at the moment to be an awkward or inconvenient situation. Japan and countries in East Europe have given a liberal interpretation to their laws to include abortions practically on request, with the few exceptions regarding duration of pregnancy, sterlization etc., leaving it to the good sense and judgement of the mother to decide for herself.

3.42 While the above or some of them are, in general, the grounds which have guided the abortion laws in various parts of the world, the situation in India must be examined very carefully in this context, bearing in mind the effects on the individual, on society and on the nation as a whole. Apart from the more metaphysical or ethical considerations, the availability of effective family planning methods and the lack of sufficient medical facilities for operative work are main points to be considered.

Taking all this into consideration, the committee has come to the conclusion that sound reasons do exist for reforming the present antiquated law of abortion.

Chapter IV
RECOMMENDATIONS

4.1 The abortion Law in India at present is as follows:-

Section 312, Indian Panal Code. 'Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to 3 years or with fine or with both; and if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

EXPLANATION: A woman who causes herself to miscarry is within the meaning of this section.'

The word miscarriage used in the section includes not only abortions but also expulsion of viable foetus before the normal birth. The only exception is in case of a miscarriage caused in good faith for the purpose of saving the life of the mother.

4.2(i) The Committee considers the above provision too restrictive; and therefore recommends that it should be liberalised to allow termination of pregnancy by a qualified medical practitioner acting in good faith not only for saving the pregnant woman's life but also:-

(a) When the continuance of the pregnancy would involve serious risk to the life, or grave injury to the health, whether physical or mental, of the pregnant woman, whether before, at, or after the birth; or

(b) When there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped in life; or

(c) When the pregnancy results from rape, intercourse with an unmarried girl under the age of 16 or intercourse with a mentally defective woman.

(ii) The Committee further recommends that the following conditions be complied with in connection with any treatment for the termination of a pregnancy, that is to say -

(a) abortions authorised under the above recommendation can be performed only by a person who holds a qualification granted by an authority specified or notified in any of the schedules to the Indian Medical Council Act 1956 (202 of 1956), as modified upto the 1st December, 1964;

(b) the treatment must be carried out in a place for the time being approved for the purpose, by the Government of India or State Government;

(c) the opinion must be certified in writing by the practitioner who carry out the termination of pregnancy before the treatment is begun;

(d) There has been before treatment a consent in writing by the pregnant woman, or, if under eighteen years of age, the pregnant girl and one of her parents or of the pregnant girl and her guardian for the termination of the pregnancy.

Provided that where the practitioner is of the opinion formed in good faith, that the termination is immediately necessary in order to save the life of the pregnant woman (and certifies his opinion in writing either before or after carrying out the treatment) conditions (b) and (d) need not be compiled with.

(iii) The Government should prescribe rules requiring the qualified medical practitioner who terminates a pregnancy to give notice of the termination, and such other information relating to the termination as may be prescribed by the regulations within such period as may be prescribed; and with respect to the disposal of certificates.

The information so furnished shall not be made public or divulged to any person other than a police officer especially authorised to obtain such information or under order of a Court of Law.

4.3 The Committee had the opportunity to see a Draft Medical Termination of Pregnancy Bill recently discussed in the British Parliament and has utilised its provisions in making the above recommendations.

4.4 The Committee is aware that it may be difficult to distinguish genuine from non-genuine cases. The Committee, however, feels that the likelihood of a few non-genuine cases should not prevent protection to a large number of genuine cases.

4.5 The Committee while making the above recommendations also strongly recommends that:

(a) In order to prevent the danger of repeated abortions in the case of woman who are not fit to bear the strain of further pregnancies the medical practitioner should advise the woman and/or her husband to undergo voluntary sterilization.

(b) The idea of a small family norm achieved through control of conception should be vigorously promoted.

(c) Readily accessible services for family planning should be extended and

(d) Family life Education to develop healthy and responsible attitudes towards sex; marriage and parenthood should be promoted.

4.6 There is very little statistical and other material available in India on this highly controversial subject of induced abortion. It has attracted public attention only recently. The Committee is aware that its recommendations are likely to be criticised either as falling too short or as going too far according to the critic's attitude. Nevertheless it is of the view that they should be placed before the

Government for their consideration as it feels that the recommendations are practicable and necessary under present conditions.

Shantilal H. Shah

Masuma Begum.

Ms. Minoo Masani*

B. N. Purandare

V. N. Shirodkar

N. P. Nathwani

S. Bhatia

Qudsia B. Wadia

Shyam Kumari Khan.

Mohammad Yamin

R. L. Parmia

*With a supplementary note.

SUPPLEMENTARY NOTE BY DR. H.N. SHIVAPURI

I concur with the recommendations made in this report. However, I would like to add a few paragraphs where I think the recommendations are not put down in clear terms. Please add this as supplementary note to the recommendations of the Committee:-

(1) *Para 4, 2(I) (b) page* 51: The words 'substantial risk' is very vague and though in some respects it gives some liberty to the Medical Practitioner to take urgent decisions, yet it is open to different interpretations by Courts of Law and may lead to endless trouble for the doctor concerned. Efforts should have been made to better define the 'risks'.

(2) *Para 4, 2.(ii) (a) page* 52: The doctor should not only held the qualification as laid down in this para, but should also be Registered either with the Medical Council of India or one of the State Medical Councils.

(3) *Para 4.2(ii)(b) page* 52 *and para 4.2(iii) para 1 on page* 52: Unlimited powers have been given to the various State Governments and these are likely to give trouble. These should have been defined better.

(4) *4.2(iii) para 2 on page* 53: Unlimited powers have been given without defining the words 'police officer'. The term is very vague. At present only a Court of Law can compel a doctor to divulge any secret information in his possession and that also a doctor does under protest and if threatened for contempt of Court.

No Police Officer has any power at present to secure secret information from the doctor. In my opinion, Police should not be given such powers, as it would result in unnecessary harassment of the doctor. But in case, the Government does not agree to my suggestion, the words 'police officer' should be defined as an officer not below the rank of a 'permanent Deputy Superintendent of Police' Any officer of rank lower than this should not have such powers.

(5) To the recommendations in the report, I would like to add 2 more, which I made as long ago as December 1959 in my presidential address delivered at Indore to the XXXVI All India Medical Conference:-

(i) I suggest raising the age of marriage of girls and boys to 21 and 25 years respectively. Scientifically that is the proper age and that will also reduce the fertility period.

(ii) Before any one is allowed to marry, the parties should undergo health examination. All those who are not fit to become healthy parents of healthy children, should be sterilized before marriage. The question of 'Fundamental Rights' should not be allowed to stand in the way, as the right of the Nation to live and prosper is much greater than the right of the individual to bring down standards of life and health.

I quite realise this suggestion is very difficult to carry out at present due to want of proper facilities particularly in the rural areas, but a beginning can be made at least from bigger towns where sufficient medical facilities may be available. This will only be a long term plan.

These two suggestions are outside the scope of the Committee, but I am putting them down if the Family Planning is considered from a wider angle.

(H.N. SHIVAPURI)

Appendix - I

No. F. 4-38/64-F.P.II
Government Of India
MINISTRY OF HEALTH.

New Delhi, dated the 29th September, 1964.

RESOLUTION

In pursuance of the recommendations of 16th meeting of the Central Family Planning Board held in Bombay on 25th August, 1964, it has been decided to constitute a committee to study the question of legalization of abortion in the country.

The composition of the Committee will be as under:-

(i)	Shri Shantilal Shah, Health Minister, Maharashtra.	Chairman
(ii)	Representative of the Indian Medical Association.	Member
(iii)	Representative of the Association of Medical Women in India.	Member
iv)	Representative of the Federation of Gynaecologists and Obstetricians.	Member
(v)	Representative of the Family Planning Association of India.	Member
(vi)	Representative of the Central Social Welfare Board.	Member
(vii)	Representative of the Indian Council of Child Welfare.	Member
(viii)	Representative of All India Women's Conference.	Member
(ix)	Lieut. Colonel B.L. Raina, Director (Family Planning).	Member-Secretary.

2. The terms of reference of the Committee will be to examine the question of legalization of abortion in all the aspects - medical, social, legal and moral and to make recommendations.

3. The Committee should submit its report by the 31st March, 1965.

4. The Committee shall have the powers to co-opt experts on concerned aspects as adhoc members.

5. Non-official members of the Committee shall be entitled to the grant of travelling and daily allowances for attending the meetings of the committee as are admissible to an officer of the highest grade in Class I of Central Services. Members of the Committee who are Government Servant will draw travelling and daily allowances as admissible to them from the same source from which they get their pay.

6. The expenditure involved will be met from sanctioned budget grant under Head 30.B.Public Health-B.S. Miscellaneous B.5(4)-Family Planning B.5(4)(2) other expenditure under Demand No.43-Medical and Public Health for the year 1964-65 of the Ministry of Health.

Sd/-(R.K. Ramadhyani)
Secretary to the Government of India.

Appendix - II

No. 4-6/55-FPII
Dated 24th Feb., '65.

From

Shri Shantilal H. Shah,
Minister for Health, Law and Judiciary,
Maharashtra and Chairman of Committee to Study
the Question of Legalization of Abortion.

Dear Friend,

In pursuance to the recommendation of the Central Family Planning Board, the Ministry of Health, Government of India has set up a Committee to study the question of legalisation of abortion in the country. This Committee can succeed in its task only with your co-operation. I have no doubt, your support will be readily forthcoming.

I am forwarding a questionnaire for your views on the subject of abortion which will be assistance to the Committee in the formulating their recommendation. The collection of reliable data is difficult. The name of the person giving information will be treated as confidential, if so desired. No punitive action against any individual will be taken by the Committee based on the information supplied. I will be grateful if you could send the required information. I am conscious that the time available is very short but I will be grateful if the required information is sent by the 31st March, 1965, to me C/o Director, Family Planning, Directorate General of Health Services, Patiala House, New Delhi.

Yours sincerely,

Sd/-

(SHANTILAL H. SHAH)

QUESTIONNAIRE ON ABORTION

NOTE: I For the purpose of this questionnaire the term 'abortion' or interruption of pregnancy will mean the discharge of the foetus and its appendages from the mother at a period when the foetus is unable to keep its life outside the mother's body, i.e. before it has become viable which period is about twenty eight weeks of pregnancy.

II Section 312 of the Indian Penal Code runs as follows:

'312. Whoever voluntarily causes a woman with child to miscarry shall, if such miscarraige be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years; or with fine, or with both; and, if the woman is quick with child; shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

EXPLANATION - A woman who causes herself to miscarry, is within the meaning of this section. The word miscarriage used in the section includes not only abortions but also expulsion of viable foetus before the normal birth. The only exception is in case of a miscarriage caused in good faith for the purpose of saving the life of the mother.

III Wherever possible please indicate the basis on which you have given the reply, the source of information and/or your reasons.

PART I

1.1 What is in your view the estimated yearly number of

I - Spontaneous abortions.

II - Induced abortions;

(a) Legal, that is to save the mother's life.

(b) Illegal

(i) for birth control

(ii) for other reasons

(Please specify the area and the period covered by the answers).

1.2 What are in your view the reasons for which people resort to

(a) Illegal abortion; for (i) Birth Control
(ii) The other reasons

To what extent do these reasons operate in both cases?

1.3 Is the incidence of illegal abortions increasing? If so the extent of the increase during the last ten years and the reasons therefor.

1.4 Do you think married persons (a) who are not able successfully to practise birth control and (b) others who do not practise birth control resort to illegal abortion?

1.5 What are the methods known to you for inducing illegal abortions?

1.6 Are there local illegal abortionists in (a) urban areas and (b) rural areas?

1.7 What are the fees of local illegal abortionists in (a) urban areas and (b) rural areas?

1.8 Which age group of women resorts to illegal abortions and for what reasons?

1.9 Are they performed (a) for economic reason or (b) for unwanted pregnancies posing a serious threat to the health of the mother?

PART II

2.1 Would you favour legalization of abortions for those women in whom pregnancy occurred and to whom birth of an additional child would cause serious threat to health of the mother. In such cases should there be a provision for conducting abortion by a qualified medical person?

2.2 If you consider that abortions for socio-economic reasons should not be legalized, state your reasons.

2.3 Would you support legalization of abortion for social and economic reasons?

If so (a) under what conditions and
(b) At what state of pregnancy should the operation be resorted to?

2.4 Do you consider that the abortion should be permitted in the following cases:

(a) If due to the mother's illness, physical defect or weakness, child birth would result in serious danger to her life or physical or mental health.

(b) If the pregnancy is a result of rape, criminal coercion or incestuous sexual intercourse.

(c) If the mother is insane or imbecile.

(d) (i) If either spouse has a hereditary disease or defect transmissible directly to the offspring (List I).

(ii) If both the spouses are carriers of a detectable hereditary trait which causes a serious or a fatal disease when it is in double dose in the offspring (List II).

(iii) If the couple has already produced a child with a hereditary disease or defect that has a high degree of recurrence in families (List III).

(iv) If the spouses are blood relations and one of their near relatives has produced an offspring with a hereditary disease or defect of the type given in (List III). For Lists I, II & III mentioned above (see para 4.1).

(e) If either spouse is suffering from leprosy which is liable to be contagious to the child.

(f) If either spouse is suffering from tuberculosis which is liable to be contagious to the child.

(g) If the mother has already three children and is willing to get sterilized concurrently with abortion.

(h) If the mother has already three children but is not willing to get herself concurrently sterilized nor her husband.

(i) If the mother has three children and both husband & wife are willing to get sterilized.

2.5 In cases (g), (h) and (i) would you prefer a birth at full period with sterilization immediately thereafter?

2.6 In case you consider inclusion of any or all the above conditions under which abortions should be permitted are you in favour of the following safeguards? (Please State yes or no).

(a) Opinion of three medical men i.e.(a) the attending physician.(b) Gynaecologist and (c) a specialist qualified to give opinion on defects for which abortion is desired.

(b) A board including a lawyer, a gynaecologist and a responsible citizen (not related to the patients) to consider the proposal for abortion.

(c) What other safeguards, if any, would you suggest?

2.7 Do you consider that in every case the application for abortion should be made.

(a) By the women herself (b) or by her guardian if the woman is under age or placed under guardianship if imbecile or is unable to give legal consent due to mental derangement?

2.8 Are you in favour of abortion being permitted in case of unmarried woman or widow generally?

2.9 Do you think that penalties should be imposed for performing permissible abortion by persons not medically qualified to do so?

2.10 In what cases would you consider making sterilization compulsory after an induced abortion?

PART III

3.1 Do you consider that artificial abortion is a sin against society, religion and culture?

(a) In all cases.

(b) Except for reasons mentioned in Q.2.4 and if so which of them, please state your reasons.

PART IV

(Answers to Part IV are requested from members of the Medical Profession only).

4.1 Do you consider that following diseases and disorders may be considered for the purposes of para 2.4 (d) above (Please state yes or no against each.)

List 1. Dominant and sex-lined diseases and defects.

1. Achondroplasia
2. Aniridia
3. Christmas disease
4. Diabetes insipidus
5. Epidermolysis Bullosa
6. Epiloia
7. Haemophilia
8. Huntington's chorea
9. Manic-depressive psychosis
10. Marfan's syndrome
11. Microphthalmos
12. Muscular dystrophy
13. Neurofibromatosis
14. Osteogenesis imperfecta
15. Partial albinism with deafness.
16. Polychthaemia vera

17. Polyposis of colon
18. Retinoblastoma
19. Spherocytosis(achluric Jaundice)
20. Total hereditary deafness.

List II. Diseases which could be prevented by Laboratory tests on parents.

1. Sickle cell disease.
2. Thalassemia major and other thalassemia diseases.
3. Erythroblastosis foetalis.

List III. Recessive diseases and defects.

1. Albinism
2. Alkaptonuria
3. Amyotonia congenita
4. Anophthalmos
5. Diabetes mellitus
6. Fibrocystic disease of pancreas
7. Galactosuria
8. Gargoylism
9. Hereditary ataxia
10. Ichthyosis congenita
11. Infantile amaurotis idiocy
12. Laurence-Moon-Biedl syndrome
13. Methemoglobineamia
14. Myoclonic epilepsy
15. Optic atrophy(Leber's disease)
16. Phenylketonuria
17. Retinitis pigmentosa
18. Schizophrenia
19. True microcephaly
20. Wilson's disease

You may suggest any other disease or disorder which in your opinion should be considered)

PART V

Kindly intimate any other information or observations which you consider will be useful to the committee to assess the extent of the problem, its effect on

individual and society and any action that may be taken. Such information or observation may be sent in the form of a brief memoranda not exceeding 2,000 words. It may also be stated if the views expressed are personal or of an organization or a group.

NOTE:- If the views expressed are of an organization or group the name and address of the organization or group and the number of members in the organization or group may be stated. In all cases give name, profession and address (including name of place, district and State) in Block letters.

Appendix - III

ANALYSIS OF THE ANSWERS TO THE QUESTIONNAIRE ON ABORTION

In all 570 filled in questionnaire were received from different categories of persons, details of which are as under.

Category	No. of Questionnaires received.
A. Officers of the Central and State Medical and Health Directorates.	127
B. Principals and Professors of Medical Colleges. Superintendents of hospitals, Members of Indian Medical Associations, Medical Officers of Municipal Corporations, and private medical practitioners.	235
C. Ministers of Central and State Governments	4
D. Members of Parliament and State Assemblies.	9
E. Welfare Organizations, including family planning associations and women organisations.	140
F. Legal experts.	16
G. Religious leaders.	8
H. Press	6
I. Unclassified.	25
Total	570

The following are the main findings from the replies received:

It has not been tabulated due to different types of replies.

In all there were 1167 (including multiple) responses to the reason for resorting to illegal abortion. Out of these 32.2% gave 'birth control' as the reason.

Social and Economic reasons were given in 21.0% and 21.3% cases respectively. In 25.5% cases 'illegitimate child' was given as the reason. Amongst most of the groups 'birth control' was expressed as the major reason. However among Central and State Ministers no one gave 'birth control' as reason and among Members of Parliament and State Assemblies 'illegitimate child' was the reason given by maximum number of respondents.

Out of 364 respondents, a huge majority i.e. 92.3% stated that the incidence of illegal abortion was increasing. One minister and 5 members of Parliament and State Assemblies who replied this question also affirmed it. Only 54 respondents give information about the extent of increase during the last 10 years. Out of these 26 said that the increase was 50.0%. Whereas another 20 gave this figure as 100.0%. Three respondents said that the increase was 400.0% whereas another 5 said that it was 450.0%.

Majority of the respondents said that both categories of the married people (a) those who are not able successfully to practise birth control and (b) others who do not practise birth control, resort to illegal abortion.

There were in all 726 responses regarding method known for inducing illegal abortion. 'Indigenous' method was known to 42.1%, 'oral methods' were known to 29.3%, 'operation' was known to 23.6% and injection was another method known to only 5.0%.

It is interesting to note that 93.6% and 99.0% respondents said that there were illegal abortionists in rural and urban areas respectively. Two ministers and seven members of Parliament and State Assemblies, also affirmed this. This clearly shows that there was no difference of opinion about rural and urban areas.

It is not possible to get any clear idea about the fees charged for illegal abortion. According to responses in rural areas it varied from 0.25 p. to Rs. 200/- and in urban areas it varied from Rs. 3.00 to Rs. 5,000.00.

From the replies received it is not possible to distinguish any specific age group of women who resort to illegal abortion. In fact the whole reproductive age group is prone to it as indicated by the replies.

Out of 883 responses regarding reasons why people resort to illegal abortion 46.4% expressed that it was due to 'Economic' reason 'Threat to Health' was another reason given by 32.6% and the remaining 21.0% said that it was due to 'Social reasons'.

It is interesting to note that none of the respondents from Category 'A' gave 'Social' as one of the reasons. In most of the categories of respondents 'Economic' reason was given by maximum number of respondents. The percentage of such respondents in categories 'A', 'B' and 'E' was 54.5, 42.6 and 49.2 respectively.

(a) Regarding legalization of abortion for those women in whom pregnancy occurred and to whom birth of an additional child would cause serious threat to health of mother. It is interesting to note that out of 532 respondents 89.3% replied that they would favour it.

(b) Out of 372 respondents 96.2% said that in such cases there would be a provision for conducting abortion by a qualified medical practitioner.

It is very interesting to note that the respondents were almost equally divided about their opinion for legalization of abortion for socio-economic reasons. Out of 379 respondents 48.3% were in favour whereas 51.7% were against it. Out of the 4 ministers who replied this question only one was in favour of it. Those who were against it gave 'Moral', Health of Mother' and 'Misuse' as the major reasons in support of their opinion.

Out of 459 respondents 57.3% supported the legalisation of abortion for social and economic reasons. Among group 'E' 71.4% of the respondents supported it.

(a) Regarding conditions under which it should be legalized, 85 replies were received out of which 72.1%

said it should be legalized for those who have 3 children. Majority in most of the categories of respondents supported it. 15.1% said that it should be legalized for 2 children and yet another 2.3% were in favour of legalization for those who had only one child. Others supported for those who had 4 and 5 children.

(b) Regarding stage of pregnancy at which operation be resorted to, 64.4% out of 233 respondents said that it should be 3 months pregnancy. 21.5% were for 2 months pregnancy. The remaining 14.1% were even in favour of for more than 3 months pregnancies, out of these 2.1% favoured even 7 months pregnancies to be operated upon.

(i) A huge majority i.e. 96.2% out of 523 respondents were in favour of permitting abortion if due to mother's illness, physical defect or weakness, child birth would result in serious danger to her life or physical or mental health. In category 'E' respondents, the percentage of those who favoured was 99.2%.

(ii) Out of 513 respondents 82.3% were in favour of permitting abortion if pregnancy is a result of rape, criminal coercion, or incestous sexual intercourse.

(iii) Out of 515 respondents 90.1% were in favour of permitting abortion if the mother is insane or imbecile.

(iv) Out of 497 respondents 89.1% were in favour of permitting abortion in cases mentioned therein.

(v) Out of 495 respondents 61.8% were in favour of permitting abortion if her spouse is suffering from leprosy which is liable to be contagious to the child. However, among category 'E' 81.9% respondents were in favour of it.

(vi) In this case the opinion was evenly divided. Out of 494 respondents 50.2% favoured permitting abortion if either spouse is suffering from tuberculosis which is liable to be contagious to the child. Among category 'E' 70.4 respondents favoured it.

(vii) About 1/3 out of the 503 respondents i.e. 33.8% were in favour of permitting abortion, if the mother has more than three children but is not willing to get sterilized concurrently with abortion. However, the percentage of such respondents was 49.6% group 'E'.

(viii) Out of 505 respondents 56.6% were in favour of permitting abortion, if the mother has already three children and is willing to get herself concurrently sterilised not her husband. However percentage of such respondents in category 'E' was quite high i.e. 72.0.

(ix) Out of 498 respondents, 60.4% were in favour of permitting abortion if the mother has three children and both husband and wife are willing to get sterilized. The percentage of such respondents in group 'E' was again highest being 75.2.

It is evident from the above findings that under conditions (i), (ii), (iii), (iv), a big majority of respondents were in favour of permitting abortion.

Under conditions (v) & (vi), 61.8% were in favour of permitting abortion.

Under condition (vii) only 33.8% were in favour of permitting abortion but this percentage increased to 56.6 under condition (viii) when mother was willing to get sterilized concurrently and it increased still further to 60.4%. Under condition (ix) when both husband and wife were willing to get sterilized.

It is very interesting to note that under all conditions percentage of respondents in favour of permitting abortion was highest among group 'E' i.e. welfare organisation including family planning associations and women organizations.

Majority of the respondents i.e. 89.6%, 87.4% & 88.8% preferred a birth at full period with sterilization immediately thereafter under conditions (vii), (viii) (ix) respectively. All the 7 members of Parliament and State Assemblies and 3 out of 4 ministers also preferred it.

(a) Out of 483 respondents 85.5% were in favour of the following safeguards (i) the attending physician, (ii) Gynaecologist, and (iii) a specialist qualified to give opinion on defects for which abortion is desired.

(b) Out of 450 respondents majority i.e. 40.2% were in favour of safeguards such as a board, including a lawyer, a gynaecologist and a responsible citizen (not related to the patient) to consider the proposal for abortion.

(c) Out of 477 respondents 90.1% considered that in any case woman should apply for abortion herself.

(d) Out of 471 respondents 91.3% considered that application should be made by her guardian if the woman is under age or placed under guardianship if imbecile or is unable to give legal consent due to mental derangement.

From above fact it is clear that majority of respondents considered that in any case application should be made for abortion.

Out of 514 respondents for each 44.2% were in favour of abortion being permitted for unmarried women and 43.8% were in favour of abortion being permitted in case of widows.

Out of 4 ministers only one was in favour of abortion being permitted for widow and unmarried women. Whereas among members of Parliament and State Assemblies 8 and 7 out of 9 were in favour of it for unmarried and widow respectively. It is interesting that maximum percentage of respondents in favour of permitting abortion for unmarried and widow women was amongst the group 'E' which consists of welfare organisations including family planning associations and women organizations

Out of 525 respondents almost all i.e. 97.7% thought that penalties should be imposed for performing permissible abortion by persons not medically qualified to do so.

Out of 375 respondents 46.7% were in favour of making sterilization compulsory after an induced abortion if the couple had 3 or more living children.

32.5% respondents were in favour of it for those cases where mother had ill health. Only 2.9% were in its favour in those cases where the abortion is done due to socio-economic reasons and another 2.7% were in favour of case of repeated abortions.

There were 15.2% who were in favour of making sterilization compulsory after an induced abortion in all cases.

(a) Out of 502 respondents only 34.1% considered that artificial abortion for all cases is a sin against society, religion and culture.

(b) Out of 330 respondents 48.8% considered artificial abortion as a sin against society, religion and culture, except for reasons mentioned in Q.2.4 earlier. Most of the respondents did not give any reason in support of their argument.

In all the diseases and disorders mentioned therein majority considered that the abortion should be permitted in these cases.

The following is the percentage of respondents who favoured abortion to be permitted in case of following diseases and disorders:-

List I - Dominant and sex-lined diseases and defects.

1. Out of 256 respondents 66.6% in case of 'Achondroplasia'
2. Out of 242 respondents 79.3% in case of 'Aniridia'
3. Out of 234 respondents 76.1% in case of 'Christmas disease'
4. Out of 252 respondents 57.9% in case of 'Diabetes insipidus'
5. Out of 235 respondents 71.1% in case of 'Epidermolysis bullosa'
6. Out of 234 respondents 79.9% in case of 'Epiloia'
7. Out of 258 respondents 77.5% in case of 'Haemophilia'
8. Out of 256 respondents 77.0% in case of 'Huntington's Chorea'

9. Out of 257 respondents 77.8% in case of 'Manic-depressive Psychosis'

10. Out of 238 respondents 78.2% in case of 'Marfan's Syndrome'

11. Out of 244 respondents 65.6% in case of 'Microphthalmos'

12. Out of 251 respondents 74.1% in case of 'Muscular Dystrophy'

13. Out of 242 respondents 57.9% in case of 'Neurofibromatosis'

14. Out of 249 respondents 79.5% in case of 'Osteogenesis imperfecta'

15. Out of 252 respondents 67.9% in case of 'Partial albinism with deafness'

16. Out of 245 respondents 67.8% in case of 'Polycythaemia Vera'

17. Out of 241 respondents 58.1% in case of 'Polyposis of Colon'

18. Out of 245 respondents 72.7% in case of 'Retinoblestema'

19. Out of 246 respondents 72.4% in case of 'Spherocytosis (acholuric Jaundice)'

20. Out of 247 respondents 69.6% in case of 'Total hereditary disease'

List II: Diseases which could be prevented by laboratory test on parents.

1. Out of 230 respondents 60.9% in case of 'Sickle cell disease'

2. Out of 232 respondents 63.4% in case of 'Thalassemia major and other thalassemia disease'.

3. Out of 230 respondents 64.3% in case of 'Erythroblastosis foetalis'

List III: Recessive diseases and defects.

1. Out of 240 respondents 62.9% in case of 'Albinism'

2. Out of 237 respondents 67.1% in case of 'Alkaptonuria'

3. Out of 231 respondents 68.8% in case of 'Amyotomia Congenita'

4. Out of 241 respondents 59.3% in case of 'Anophthalmos'

5. Out of 236 respondents 57.6% in case of 'Diabetes Mellities'

6. Out of 236 respondents 67.3% in case of 'Fibrocystic' disease of 'Pancreas'

7. Out of 244 respondents 63.1% in case of 'Galactosuria'

8. Out of 236 respondents 67.0% in case of 'Gargoylism'

9. Out of 242 respondents 74.0% in case of 'Hereditary atexia'

10. Out of 232 respondents 66.8% in case of 'Ichthyosis Cogenita'

11. Out of 238 respondents 70.2% in case of 'Laurence-Moon-Biedl syndrome'

12. Out of 235 respondents 72.8% in case of 'Infantile amaurotis idiocy'

13. Out of 235 respondents 62.6% in case of 'Methemoglobineamia'

14. Out of 237 respondents 72.2% in case of 'Myoclonic epilepsy'

15. Out of 238 respondents 67.6% in case of 'Optic atrophy' (Leber's disease)

16. Out of 232 respondents 65.9% in case of 'Phenylketenuria'

17. Out of 236 respondents 57.6% in case of 'Retinitis Pigmentosa'

18. Out of 251 respondents 70.9% in case of 'Schizophrenia'

19. Out of 240 respondents 70.4% in case of 'True Microcephally'

20. Out of 236 respondents 68.2% in case of 'Wilson's disease'

SUMMARY OF MAIN FINDINGS:

PART - I

1. Reasons for resorting to illegal abortion:

   Birth control 32.2%, Social 21.0%, Economic 21.3%, illegitimate child 25.5%

2. Is the incidence of illegal abortion increasing:

   Yes - - 92.3%

3. What category of married persons resort to illegal abortion:

   Majority (85.5%) said both who do not practise family planning and who are not able to practise it sucessfully.

4. Methods known for inducing illegal abortion:

Indigeneous	known to -	42.1%
Oral	known to	29.3%
Operation	known to	23.6%
Injection	known to	5.0%

5. Local illegal abortionists:

   98.6% respondents replied in affirmative for rural areas whereas 99.0% affirmed for urban areas.

6. Reasons why illegal abortions are performed:

'Economic' reason	given by 46.4%
Threat to health	given by 32.6%
Social	given by 21.0%

PART - II

1. Should abortion be legalised when additional child would cause serious threat to mother's health:

   89.3% were in favour.

2. Should abortion be legalized for socio-economic reasons:

   57.3% supported.

3. Conditions under which it should be legalised for socio-economic reasons:

72.1% said it should be legalised for those having 3 children.
15.1% said it should be legalised for those having 2 children.
2.3% said it should be legalised for those having 1 child
Others said it should be legalized for those having 4 to 5 children.

4. Pregnancy stage at which operation be resorted to:

21.5% were for 2 months pregnancy.
64.4% were for 3 months pregnancy.
14.1% were for more than 3 months pregnancy.

5. Should abortion be permitted under these conditions:

Conditions	Percentage of respondents who favour it
(a) If child birth is serious danger to mother's health.	96.2
(b) If pregnancy is result of rape etc.	82.3
(c) If mother is insane or imbecile	90.1
(d) If either spouse is suffering from tuberculosis which is contagious to the child	50.2
(e) If mother has more than 3 children but is not willing to get sterilized concurrently	33.8
(f) If mother has 3 children and is willing to get herself concurrently sterilized, not her husband.	56.6
(g) If mother has 3 children and both husband & wife are willing to get sterilized.	60.4
(h) If either spouse is suffering from leprosy which is liable to be contagious to child.	61.8

6. Under conditions (e), (f) & (g) mentioned in item 5 above, 89.6%, 87.4% and 88.8% respondents respectively preferred birth at full period with sterilization immediately thereafter.

7. 85.5% respondents were in favour of safe-guards.

8. 44.2% were in favour of abortion being permitted for unmarried women.

9. 43.8% were in favour of abortion being permitted in case of widows.

10. 97.7% respondents thought that penalties should be imposed for performing permissible abortion by persons not medically qualified to do so.

PART - III

11. 34.1% considered artificial abortion as a sin against society, religion and culture.

12. 48.8% respondents considered artificial abortion a sin against society, religion and culture except for reasons mentioned in item No.5 above.

PART - IV

Majority of respondents favoured abortion to be permitted in all cases of various diseases and disorders mentioned therein and the percentage of these respondents varied from 57.6 to 79.5.

Appendix (IV)

ABORTION LAWS IN FOREIGN COUNTRIES

A knowledge of the laws of abortion prevalent in different countries is essential in the context of making recommendations for amending the existing abortion laws in India. The Committee while trying to draw upon the experience of other countries regarding legalisation of abortion, is well aware of the fact that the laws in each country have been drafted and amended to suit the needs and changing socio-economic and cultural conditions, which are unique to each country. Consequently, in the overall pattern of legalisation of abortion, considerable variations between the countries is apparent. While in the developing countries the population problem is one of explosion, in the European countries it is a battle against abortion. The Committee which has exclusively gone into the problem of abortion in its various aspects, considered it worthwhile to review the state of abortion laws in countries all over the world.

Hence the Committee collected information on abortion laws in countries all over the world, through the Indian embassies and high commissions. The information so obtained has been presented in the following paragraphs; producing the decrees, laws and articles in original, wherever they are available:

ETHIOPIA

Extract from the Penal Code of the Empire of Ethiopia. 1957

Articles 528-538

Section II. Offences against Life Unborn: Abortion.

Art. 528 Principle.

(1) The deliberate termination of a pregnancy, at whatever stage or however effected, is punishable according to the following provisions, except as otherwise provided. (Art. 534).

The nature and extent of the punishment awarded for abortion shall be determined according to whether it is procured by the pregnant woman herself or by another, and in the latter case according to whether or not the pregnant woman gave her consent.

Termination of pregnancy by imprudence or negligence does not come under the criminal law.

(2) The advertising for contraceptive or abortive means is punishable under the code of petty offences (Art.802).

Art. 529 *Abortion procured by the Pregnant Woman.*

(1) A pregnant woman who procures her own abor tion is punishable with simple imprisonment from three months to five years.

(2) Any other person who procures for her the means of, or aids her in the abortion shall be punished in accordance with the general provisions as an accomplice or co-offender.

In the latter case, the punishment is simple imprisonment from one to five years.

Art. 530 *Abortion procured by another.*

(1) Whosoever performs an abortion on another, or assists in the commission of the offence is punishable with rigorous imprisonment not exceeding five years.

(2) Rigorous imprisonment shall be from three to ten years, where the woman was incapable of giving her consent, or where such consent was extorted by threats, coercion or deceit, or where she was incapable of realizing the significance of her actions, or where the intervention was effected against her will.

Art. 531. *Aggravated Cases.*

(1) Where the offender has acted for gain, or where he has habitually made a professior

of abortion within the meaning of Art. 90, the punishment prescribed in the preceding article shall apply and a fine shall be imposed in addition.

(2) Where the offender has improperly practised his or her profession, especially that of doctor, pharmacist, midwife or nurse, the Court shall, in addition, order prohibition of practice, either for a limited period, or where the offence is repeatedly committed, for life (Art. 122).

Art. 532 *Attempt to procure an Abortion on a Woman not with Child.*

The general provisions relating to offences impossible of completion (Art. 29) apply in the case of attempt to procure an abortion on a woman wrongly supposed to be pregnant.

Art. 533 *Extenuating Circumstances.*

Apart from the general extenuating circumstances justifying ordinary mitigation of the punishment (Art. 79), the Court may mitigate it without restriction (Art. 185) where the pregnancy has been terminated on account of an exceptionally grave state of physical or mental distress, especially following rape or incest, or because of extreme poverty.

Art. 534 *Termination of Pregnancy on Medical Grounds.*

(1) Termination of pregnancy is not punishable where it is done to save the pregnant woman from grave and permanent danger to life or health which it is impossible to avert in any other way, provided that it is performed in conformity with the following legal requirements.

(2) Except where impossible, the danger shall be diagnosed, and certified in writing, by a registered medical practitioner, after examination of the applicant's state of health.

(3) The termination of the pregnancy shall be conditional upon:

(a) the findings and concurrent opinion, after a prior period of observation, where necessary, of a second doctor qualified as a specialist in the alleged defect of health from which the pregnant woman is suffering and empowered by the competent authority, either generally or in each specific case, to issue the necessary authorization; and

(b) the duly substantiated consent of the pregnant woman, or where she is incapable under the provisions of civil law or on account of her physical condition of giving it; that of her next of kin or legal representative.

(4) The doctor terminating the pregnancy cannot evade these conditions by invoking his professional duty (Art.65); where he terminates the pregnancy without observing the legal safeguards, he becomes liable to the provisions relating to abortion.

Art.535 *Required formalities and penalties for non-observance.*

(1) The doctor who confirms the state of health justifying the termination of the pregnancy and authorizes the intervention, shall keep a duplicate of the findings and decisions and transmit them to the competent official department within the period of time fixed by law.

The doctor terminating the pregnancy shall notify that department forthwith.

No doctor may in such a case invoke professional secrecy (Art.407).

(2) In the event of omission to comply with these obligatory formalities, the relevant penalties apply (Art.709).

In the event of repeated omissions, the offending doctor may be temporarily deprived of the right to exercise his profession (Art. 122).

Art. 536 Emergencies.

(1) In the case of grave and imminent danger which can be averted only by an immediate intervention, the provisions relating to state of necessity apply (Art. 71).

(2) The prior consent of the pregnant woman or, in default thereof, that of her next of kin or legal representative where it is possible to secure it, and subsequent notification to the competent official department, are none the less required in all cases of termination of pregnancy, under pain of the penalties prescribed in the preceding article.

Chapter 2. Offences Against Person and Health.

Art. 537 Principle.

(1) Whosoever intentionally or by negligence, causes bodily injury to another or impairs his health, by any means, is punishable in accordance with the provisions of this chapter.

These provisions embrace all manner of bodily assaults, blows, wounds, maiming, injuries or harm, and all damage to the physical or mental health of an individual, where their casual relation to the offender's prejudicial act is established (Art. 24).

(2) Compensation to the injured party is determined by the court in the light of the gravity of the injury and the position of the parties, in accordance with the relevant general provision (Art. 100).

UNITED ARAB REPUBLIC

Abortion is prohibited and is punishable in conformity with criminal law, unless it is necessitated by medical treatment. The penalty is more severe if the abortion is the result of force or illtreatment or if it is carried out by a doctor, a chemist or a mid-wife.

IVORY COAST

There are no laws on abortion in existence at Ivory Coast.

KENYA

There is no law in force in Kenya specifically authorising abortion. Abortion or procuring abortion is an offence under Section 158 and 159 of the Penal Code (Cap. 63 Laws of Kenya). In Kenya, all operations connected with abortion are illegal, unless intended to save the life of a mother or avoid physical or mental injury to her.

MADAGASCAR

Abortion is still illegal in Madagascar and there is no likelihood of legalisation of the same in this country, as this Island Republic is still underpopulated and malagasy people sincerely desire to have more population by the indigenous people.

MAURITIUS

There is no legalisation of abortion. Abortion is a crime under the law.

RHODESIA & NYASALAND

Abortion is a common law crime in all the three territories of the Federation of Rhodesia and Nyasaland viz., Southern Rhodesia, Northern Rhodesia and Nyasaland.

SENEGAL

There are no laws on abortion in Senegal.

UGANDA

There is no legislation in respect of abortion in Uganda. In this respect the British Law and practice is followed in Uganda.

UPPER VOLTA

There are no Laws on abortion in Upper Volta.

CANADA

Though two provinces in Canada, British Columbia and Alberta have provision for sterilization, tnere are no definitive laws on abortion.

UNITED STATES OF AMERICA

In the United States the laws of most States stipulate threat to the life of women as the only legal ground on which abortion can be sought. In some hospitals eugenic indications such as the occurrence of German measles in the first trimester of pregnancy is considered, justified reasons to conduct abortions, though strictly speaking the law does not permit it. 'Generally, however, the interpretation of the law by physicians and hospital administrators tends to be conservative.[1]

In the New York City where all fatal deaths must be registered, the annual numbers of therapeutic abortions have declined from about 700 in the middle 1940 to 284 in 1961. The ratio per 1000 live births has fallen from 4.7 to 1.7. This overall trend conceals a sharp and continuing decline in traditional medical indications and an increase in the incidence of abortion on psychiatric grounds. The proportion of therapeutic abortions in New York City performed for psychiatric indications has increased from about one tenth to one half.[2]

CALIFORNIA

Amended on May 28, 1965.

(e) 'Minimal procedural requirements' include the following:

'(1) The Committee shall consist of not less than five members, of whom one must be a specialist in obstetrics, a second must be a specialist in obstetrics

---

[1] C. Tietze. 'Induced abortion and sterilization as methods of fertility control.' *National Committee on Maternal Health Inc.* New York: 27: 1161-1171: 1965.

[2] C. Tietze, *Op. cit.*

or pediatrics, a third must be a specialist in internal medicine, and a fourth must be a specialist in psychiatry; and

(2) The Committee shall meet at a regularly appointed time and place; and

(3) The Committee shall not approve an abortion unless, by the terms of Section 274 of the Penal Code, the abortion is one not prohibited by that section; and

(4) The Committee shall not approve the performance of a therapeutic abortion in any case in which the application is not supported by the written consent of the patient and, if she is a minor, of her parent or guardian; and

(5) The Committee shall not approve the performance of a therapeutic abortion in any case in which the application is not supported by the written opinions of at least two medical practitioners, at least one of whom shall be a specialist in the field of the disease or condition which is advanced as the reason for performance of the therapeutic abortion, and none of whom shall be a member of the Committee; and

(6) Approval shall require the unanimous assent of the Committee.

(7) The Committee shall not approve the performance of a therapeutic abortion on the ground that pregnancy resulted from a violation of Section 261 or Section 285 of the Penal Code unless the requirements of this paragraph or paragraph (8) have been met. Either at the time of applying to the committee for approval of an abortion or before such time, the patient shall file with the district attorney of the country wherein the alleged violation occurred a statement of the facts concerning the alleged violation. Upon receipt of the application, the committee shall notify the district attorney informs the committee that there is a probable cause to believe the alleged violation did occur, the committee may approve the abortion. If, within 10 days after the committee has notified the district attorney of the application,

the committee does not receive a reply from the district attorney, it may approve the abortion. If the district attorney informs the committee that there is no probable cause to believe the alleged violation did occur, the committee shall not approve the abortion, except as provided in paragraph (8).

(8) If the district attorney notifies the board that there is no probable cause to believe the alleged violation did occur, the patient may petition the superior court of the country wherein the violation is alleged to have occurred, to determine that the violation did occur. Hearing on the petition shall be set for a date not later than one week after the date of filing of the petition. If the court finds that there is probable cause to believe that the pregnancy did result from a violation of Section 261 or Section 285 of the Penal Code, it shall issue its order so declaring whereupon the committee may approve the abortion. Any hearing granted under this section may, at the court's discretion, be held in camera. The findings, conclusions or determinations of the court in a proceeding under this section shall be inadmissible in any other action or proceeding.

25952. A physician and surgeon licensed to practice in this state may lawfully perform a therapeutic abortion, and other licensed practitioners of the healing art may, as necessary, assist such physician and surgeon, in a hospital which has complied with section 25953, if the performance of the abortion has been approved by the therapeutic abortion committee of the hospital.

25953. Any hospital which has in operation a committee which complies with the minimum procedural requirements shall certify that fact in writing to the State Department of Public Health. Such certification shall thereafter be filed annually and shall remain in effect until voluntarily withdrawn by such hospital or cancelled by the department. Proceedings for cancellation shall be conducted in the same manner as proceedings for revocation of a license of a hospital. Cancellation of a certificate shall not preclude revocation of a license.

25954. Every hospital in which a therapeutic abortion committee exists shall maintain records adequate to show that the operations of its committee comply with the minimal procedural requirements. Each such hospital shall furnish to the State Department of Public Health such reports as the department may require; provided, that such reports shall not include the name of the patient on whom the therapeutic abortion is performed.

SEC. 2. Section 274 of the Penal Code is amended to read:

274. Every person who provides, supplies, or administers to any woman, or procures any woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman is punishable by imprisonment in the State prison not less than two nor more than five years. This section does not apply to any therapeutic abortion performed because there is substantial risk that continuation of the pregnancy would gravely impair the physical health of the mother or that the child would be born with a grave physical defect, or because the pregnancy resulted from a violation of Section 261 (except that, where a violation of paragraph 1 of Section 261 is alleged, the female must have been under the age of 14 years) or Section 285 of this code, if the abortion is performed under the procedures set forth in the Therapeutic Abortion Act [Chapter 11 (commencing with section 25950) of Division 20 of the Health and Safety Code].

SEC. 3. Section 275 of the Penal Code is amended to read:

275. Every woman who solicits of any person, any medicine, drug, or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage is punishable by imprisonment in the State prison not less than one nor more than five years.

This Section does not apply to solicitation of the performance of a therapeutic abortion or the submission to a therapeutic abortion, pursuant to the Therapeutic Abortion Act.

SEC. 4. Section 276 of the Penal Code is amended to read:

276. Every person who solicits any woman to submit to any operation, or to the use of any means whatever, to procure a miscarriage is punishable by imprisonment in the country jail not longer than one year or in the State prison not longer than five years, or by fine of not more than five thousand dollars ($5,000). Such offence must be proved by the testimony of two witnesses, or of one witness and corroborating circumstances.

This section does not apply to solicitation of a woman to submit to a therapeutic abortion pursuant to the Therapeutic Abortion Act.

CUBA

Article 443 of the Social Defence Code, in force since 10th October, 1938, establishes the following:

'A person is exempt from criminal responsibility if:

(a) The necessary abortion is in order to save the life of the mother or to prevent a great damage to her health.

(b) The one provoked or made with her consent when the child was conceived on account of rape or violation not followed by marriage, or ravishment.

(c) The one provoked or made with the consent of the parents with the purpose of preventing the transmission of a hereditary or serious contagious disease to the futus'

Experiences regarding abortions have been two, before the triumph of the Revolution there was a total nonfulfilment of the law and abortions were made by doctors and others who were not doctors, without scruples, through the most diverse means

highly dangerous for the health of the woman, charging exaggerated prices, in consultation rooms, private clinics or at the woman's home, causing many deaths through hemorrhage, tetanus or infections, and deaths in such cases reached a high number in 1957 and 1958.

In 1959, with the triumph of the Cuban Revolution, this deplorable situation was eradicated. Those dedicated to such activities were repressed when they were found guilty and through educational, coercive and convincing methods were made to obey what is disposed by the Social Defence Code. Many of the causes that compelled these practices have disappeared.

Abortions are now only made in hospitals by highly qualified doctors, in the best aseptic conditions, where the life of the patient is guaranteed and strictly when the abortion is exempt of criminal responsibility, in accordance with the Social Defence Code.

MEXICO

Regarding abortion, which is also considered as a crime, the Penal Code for the Federal District and Territories, lays down vide its Chapter VI :-

Article 329 - Abortion is the death of the product of conception in any moment of pregnancy.

Article 330 - One who performs abortion for a woman will be punished with prison from one to three years, despite the means used, provided that it is done with her approval. When she does not give her approval, imprisonment will be from three to six years, and if there is physical or moral violence, the delinquent, will be imprisoned from six to eight years.

Article 331 - If abortion is caused by a Surgeon obstetrician or midwife, despite the sanctions laid down in the previous articles, they will be suspended from two to five years from the exercise of their profession.

Article 332 - A mother who voluntarily procures her abortion or accepts that some one else provokes it will be imprisoned for six months provided (i) she has not bad reputation (ii) she had hidden her pregnancy, and (iii) that it is the fruit of an illegitimate union. Lacking one of these circumstances, she will be punished with imprisonment from one to five years.

Article 333 - Abortion caused only by imprudence of the pregnant woman is not punished when pregnancy is the result of a violation.

Article 334 - No sanctions will be appreciable in case the pregnant woman is in danger of death if abortion is not provoked according to the judgement of the doctor who attends to her, who will have the opinion of other doctor assisting him, provided that abortion is possible and is not dangerous.

ARGENTINA

Art. 85:- The persons causing an abortion will be punished thus:

1. With arrest or imprisonment from 3 to 10 years, if he had acted without the approval of the woman. This sentence can be increased to 15 years, when the abortion has caused the death of the woman.

2. With arrest or imprisonment from 1 to 4 years, when he has acted with the woman's approval. The maximum sentence will be increased to 6 years, if he has caused the woman's death.

Art. 86:- Physicians, surgeons, midwives or apothecaries incurring in the sentences mentioned in the preceding article, will also be prohibited from exercising their trade for the double amount of years of their sentence, whenever they have caused or contributed to the abortion.

The abortion practised by a doctor with corresponding degree, with the approval of the expectant woman, is not punishable:

1. Provided it has been carried out in order to prevent a danger to the mother's health or when this danger cannot be avoided by other means.

2. If the pregnancy is due to rape or to an assault made against an idiotic or mad woman. In this case, the consent of her legal representative is necessary for the abortion

Art. 87: The person causing an abortion by violence, without having intended to cause it, having known her pregnancy, will be sentenced to from 6 months to 2 years.

Art. 88: The woman causing her own abortion or consenting it to be carried out by some other person, will be sentenced to from 1 to 4 years. The woman's attempt is not punishable.

BOLIVIA

Bolivia is a under populated country and hence the need for family planning looks paradoxical. Abortions, however, are not legalised.

BRAZIL

Being a predominantly Catholic area, abortion is considered to be a serious penal offence.

BRITISH GUIANA

There is no legislation in British Guiana making abortion legal.

CHILE

In Chile, the provoked abortion is illegal, being permitted only in accordance with the indications contained in the Sanitary Code, Book IV, Title III, Art. 226 which stipulates: 'interruption of pregnancy of a woman are permitted only for therapeutic purposes. To proceed with this intervention, requires an opinion of three doctors. When it is not possible to proceed accordingly, due to urgency or lack of doctors, the operating doctor must certify his actions in a document, signed by two witnesses, and keep in his possession a copy of the corresponding testimony'.

'Another legal document is the Regulation of the Private Maternity Establishments'; in its Art. 10, reference is made to hospitalisation of women for the purpose of interrupting the pregnancy and says: 'it

will be necessary to obtain a written order from three doctors and one of these doctors must be specialized in obstetricy'.

Finally, the Penal Code, in its Book II, Title VIII (crimes and simple delinquencies against family order and public morals) refers in its Art. Nos. 342, 343, 344 and 345. to the abortion and its sanctions.

PERU

Abortion: Police measures for its restriction. Supreme decree

CONSIDERING:

That the Presidency of the Public Charity Society of Lima has reported to the Government Ministry that, in the course of last year, the Maternity Hospital of Lima has attended 1,546 cases of complications due to provoked abortion, presuming that the total number of abortions is much higher;

That the practice of abortion constitutes a crime, foreseen and punished by Articles 159 and 164 of the Penal Code.

That as a logical consequence of State's duty to promote, by all available means, the increment of natality it is State's obligation to persecute the practice of abortion in all its forms and to put an end to the alarming impunity which, until now, has favoured the performance of such crime.

In accordance with the dispositions of Articles 59 and 76 of the Code of Penal Proceedings;

DECREES:

1. It is an obligation of police authorities to persecute the crime of abortion and for this purpose, vigilance must be established in Public Hospitals by the Investigations' Corps.

2. The Direction of the Police Health Department will designate a doctor specialized in this branch of medicine, to act as adviser to the members of Investigations' Corps in case of need.

3. As soon as a criminal abortion or attempt of abortion of this class is being discovered, the corresponding denunciation must be made to the Court of Instruction, under severe responsibility of the authorities which omit the fulfilment of such obligation.

4. The Prefectures and Sub-prefectures of the Republic will proceed to close, on the same day, the establishments or houses which attend pregnant women, with the exception of Clinics, Hospitals, Medical Offices and obstetric establishments duly authorised for this purpose.

Issued at the Government House in Lima on the twenty-fourth day of May, 1946.

Crime against Public Health Page 95
Penal Code

Crime against honour page No. 56

Art. No. 155. The mother who will intentionally kill her child during birth or while in the puerperal state, will suffer reclusion in a penitentiary of not more than three years or imprisonment term of not more than six months.

Art. No. 159. The woman who, by her own means or with the assistance of other person, with her consentment, will provoke her own abortion, will suffer a penalty of prison term of not more than four years.

Art. No. 160. Person who provokes abortion in a woman, with or without her consentment, or gives her assistance for the said purpose, will be punished by reclusion in a penitentiary for a maximum term of four years or by a prison term of not more than two years.

The penalty term may be extended upto six years, if the abortion or method used for the purpose, will cause woman's death and if the criminal was able to foresee the result.

Art. No. 161. Person who performs abortion in a woman without her consentment or against her will...

Art. No. 162. Doctors, Surgeons, Midwives, Druggists or any other person dedicated to sanitary professions who abuse their professional knowledge by provoking abortion, will suffer penalty in accordance with above articles and will be subject to special inability for a term of not less than five years.

Art. No. 163. Abortion made by a doctor with consentment of a pregnant woman is not punishable when there is no other means of saving mother's life or to avoid a serious and permanent damage to her health.

Art. No. 164. A person who will perform abortion by violence, without intention to do so when the condition of pregnancy is visible, will suffer imprisonment term of not more than two years.

ADEN

While sterilization is allowed, abortion is illegal in Aden. There is, however, no specific Local Legislation on these subjects.

BAHRAIN

In the Island of Bahrain abortion is considered an offence under the local law.

IRAN

Punishment for murder or injury.

Art. 180. He who intentionally causes abortion to a woman by inflicting an injury or by hurting her in any manner whatsoever shall be liable to rigorous imprisonment from 3 to 10 years.

181. He who intentionally causes abortion to a woman by administering medicine or by any other mean shall be liable to one to 3 years' Correctional Confinement. In case of inducing a pregnant woman to use such means the punishment shall be Correctional Confinement ranging from 3 to 6 months.

182. A woman who knowingly and without the permission of doctor agrees to take medicines or other edibles or drinks or for the usage of any such means or consents to make use of such means and thereby

causes abortion, she is liable to a Correctional Confinement from 1 to 3 years. If such an action of the woman is under the instructions of her husband, the woman shall be exempted and her husband will instead be punished.

183. The doctor, mid-wife, the surgeon or the pharmacist and those who act as doctor, midwife, surgeon or pharmacist provide material for abortion shal be punished by rigorous imprisonment ranging from 3 to 10 years unless it is proved that such an action of the doctor, mid-wife or the surgeon was for the preservation of the life of the mother.

IRAQ

The act of abortion is an offence under the Iraqi Law.

LEBANON

Abortion is criminal unless a bond of doctors certify that the life or mental health of the pregnant patient is in danger.

MUSCAT, OMAN TRUCIAL STATES AND DOHA

This part of the world has not so far woken up to such progressive influences of the medical science and conditions there are centuries old, where the rate of literacy is almost infinitesimal. Even otherwise the Quranic Laws are prevalent in this country in regard to the religious and legal affairs which strictly prohibits abortion.

SAUDI ARABIA

The Islamic Shariat supplemented by the Royal decree, forms the law of the land. The question of formulating laws on abortion has never entered the mind of the Law-makers. Saudi Arabia is a very sparely populated country and the administration therefore, does not concern itself with controlling population growth. In Shariat abortion would be considered a penal offence.

TURKEY

The bill for birth control and family planning in Turkey has not yet been passed by the Turkish Parliament.

AFGHANISTAN

No abortion laws have been enacted so far.

NEPAL

The following provision has been made under the Chapter of offence relating to murder in the Mulki Ain (Law of the Realm).

Sec. 28: Abortion, attempt to cause abortion with the help of other person is punishable except on the ground of beneficial measure.

Sec. 29: If abortion occurs on account of malicious discussion with a pregnant, it is punishable even if the discussions are held with an intention to cause abortion on her.

Sec. 31: If abortion caused with the consent of pregnant woman, he shall be imprisoned for two years, if she is pregnant for the last six months. If pregnancy exceeds more than six months, he shall be imprisoned for a period of three years. If there is a consent of the pregnant woman for causing abortion, the woman and the man aiding and abetting for abortion shall be punished for a period of one year if she was pregnant for the last six months. If pregnancy exceeds more than six months, they shall be imprisoned for a period of one year and six months. If the baby was born alive in course of abortion, the term of punishment shall be reduced to half.

Sec. 32: If abortion was caused with the knowledge of pregnancy of a woman for the last six months in accordance with Section 29, he shall be imprisoned for a period of three months. If pregnancy exceeds more than six months, he shall be imprisoned for six months. If abortion was caused without the knowledge of the pregnancy of a woman, a sum of Rs. 25/- shall be fined, if pregnancy exceeds more than six months, a sum of Rs. 50/- shall be fined.

Sec. 33: No case against the complaint of alleged abortion shall be entertained in the law court if the time of alleged abortion expired for a period of three months. If the person who is alleged to have caused abortion, admitted his offence, a case of abortion can be entertained in the law court even after the expiry of three months.

It is, therefore, observed that Section 28 is the only under which an attempt has been made to legalize abortion.

CAMBODIA

Abortion is prohibited by law and is a punishable offence under Arts. 455, 456, 457 & 458 of the Penal Code.

However, in case abortion is considered medically necessary in order to save the life of a mother in danger, it is permissible under Art. 459 of the P.C. and this should be done under medical supervision by a doctor under intimation to the district authorities.

The Royal Government of Cambodia does not intend to organise in an official and systematic manner the practice of abortion which is very little in practice in Cambodia.

SINGAPORE

There is no legislation in Singapore on abortion. Although the subject was once discussed in the Ministry of Health, no policy was formulated and it is stated that is unlikely that the Singapore Government will enact legislation in the near future.

THAILAND

According to the penal code of Thailand B.E. 2499 (1956), Chapter 3 on abortion states:

Section 301: Any woman who causes abortion for herself, or allows any other person to procure abortion for her shall be punished with imprisonment not exceeding three years or fine not exceeding six thousand baht, or both.

Section 302: Whoever procures abortion for any woman with her consent shall be punished with imprisonment not exceeding seven years or fine not exceeding fourteen thousand baht, or both.

If such act causes death to the woman, the offender shall be punished with imprisonment not exceeding ten years and fine not exceeding twenty thousand baht.

Section 303: Whoever procures abortion for any woman without her consent shall be punished with imprisonment not exceeding seven years or fine not exceeding fourteen thousand baht, or both.

If such act causes other grievous bodily harm to the woman, the offender shall be punished with imprisonment of one to ten years and fine of two thousand to twenty thousand baht.

If such act causes death to the woman, the offender shall be punished with imprisonment of five to twenty years and fine of ten thousand to forty thousand baht.

Section 304: Whoever attempts to commit the offence according to Section 301 or 302, first paragraph, shall not be punished.

Section 305: If the offence mentioned in Sections 301 and 302 be committed by a medical practioner, and

(1) it is necessary for the sake of the woman's health; or

(2) the woman is pregnant on account of the offence mentioned in Section 276, 277, 282, 283, or 284 having been committed, the offender is not guilty.

REPUBLIC OF VIETNAM

Under the Morality Law of 1962 sterilization and abortion are prohibited in the Republic of Vietnam.

CHINA

According to reports received, in China voluntary abortion is permissible.

HONG KONG

According to legal reports received from Hong Kong Government, abortion is punishable under sections 46 & 47 of the offences against the person ordinance which states:

46. *Administering drug or using instrument to procure abortion.*—Any woman, being with child, who with intent to procure her own mis-carriage, unlawfully administers to herself any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent, and any person who, with intent to procure the miscarriage of any woman, whether she is or is not with child, unlawfully administers or causes to be taken by her any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent, shall be guilty of felony, and shall be liable to imprisonment for life.

47. *Procuring drug etc. with intent to cause abortion.*—Any person who unlawfully supplies or procures any poison or other noxious thing or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman whether she is or is not with child, shall be guilty of a misdemeanour, and shall be liable imprisonment for three years.

JAPAN

EUGENIC PROTECTION LAW IN JAPAN

(Latest Revised Edition)

August 1960

Institute of Population Problems
Ministry of Health and Welfare
Japan

Eugenic Protection Law

(Law No. 156 of July 13, 1948)

(Signed by the Attorney-General and the Minister of Health and Welfare)

Amendments:

Law No. 154 of May 31, 1949

(Amendment under Article 1 of the Law relating to the Readjustment of the Relevant Laws and Ordinances in Consequence of the Enforcement of the Law for Establishment of the Ministry of Health and Welfare);

Law No. 216 of June 24, 1949

(First amendment);

Law No. 174 of June 1, 1951

(Amendment under Article 2 of the Law for Partial Amendment to the Law for Establishment of the Ministry of Welfare for Readjustment etc. of the Commission, etc.);

Law No. 141 of May 17, 1952

(Second amendment);

Law NO. 213 of August 15, 1953

(Amendment under Article 24 of the Law relating to the Readjustment of the Relevant Laws and Ordinances in Consequence of the Enforcement of the Law for Partial Amendment to the Local Autonomy Law);

Law No. 127 of August 5, 1955

(Third amendment);

Law No. 55 of April 21, 1960

The Eugenic Protection Law shall be established as follows:

Contents of the Eugenic Protection Law

Eugenic Protection Law

Chapter I. *General Provisions*

(Object of this Law)

Article 1. The object of this Law is to prevent the increase of the inferior descendants from the eugenic point of view and to protect the life and health of the mother as well.

(Definition)

Article 2. The term 'eugenic operation' as used in this Law shall be defined to mean the surgical operation to be prescribed by order which shall incapacitate a person for reproduction without removing the reproduction glands.

2. The term 'artificial interruption of pregnancy' as used in this Law shall be defined to mean the artificial discharge of a fetus and its appendages from the mother at the period that a fetus is unable to keep its life outside of the mother's body.

Chapter II: *Eugenic Operation*

(Discretionary eugenic operation)

Article 3. The physician may exercise the eugenic operation, at his descretion, on a person who falls under any of the following items, with the consent of the person in question and the spouse (including a person who, though not registered, is actually under marital status. The same hereinafter). Minors, mental patients and those who have mental weakness shall be exceptions.

(1) If the person in question or the spouse has the hereditary psychopathias, hereditary bodily disease or hereditary malformation or if the spouse has a mental disease or is mentally deficient.

(2) If the person or the spouse has a relative in blood within the 4th degree of consanguinity who

has the hereditary mental disease, hereditary mental deficiency, hereditary psychopathias, hereditary bodily disease or hereditary malformation.

(3) If the person in question or the spouse is suffering from leprosy, which is liable to carry infection to the descendants.

(4) If the life of the mother is endangered by conception or by delivery.

(5) If the mother has several children and her health condition seems to be seriously affected by each occasion of delivery.

2. In the cases mentioned in items 4 and 5 of the preceding paragraph, the eugenic operation under the same paragraph may be performed upon the spouse as well.

3. With respect to the consent mentioned in paragraph 1, the sole consent of the person in question shall suffice, if the spouse is unknown or cannot express his or her intention.

(Application for eugenic operation for which examination is required).

Article 4. The physician shall apply to the Metropolitan, Hokkaido or Prefectural Eugenic Protection Commission for examination as to the propriety of exercising the eugenic operation, if he finds that the eugenic operation is necessary for the sake of public interests in order to prevent hereditary transmission of the disease, in a case where the result of his examination evidently shows the disease enumerated in the Annexed list.

(Examination for eugenic operation)

Article 5. When the Metropolitan, Hokkaido, or Prefectural Eugenic Protection Commission has received an application under the provisions of the preceding Article, the Commission shall notify a person who shall undergo the eugenic operation to that effect, and accordingly shall notify the applicant and the person who shall undergo the operation of the decision reached by

judging whether the eugenic operation shall be exercised or not, upon examinating whether the case under application meets the requirements provided for in the said Article.

2. When the Metropolitan, Hokkaido or prefectural Eugenic Protection Commission has decided that eugenic operation should be exercised, the Commission shall, upon hearing the opinions of the applicant and others concerned, designate the physician who shall carry out the operation and notify the applicant, the person to be operated on, and the physician concerned of such designation.

(Application for review).

Article 6. In cases where a person in respect of whom it has been decided to exercise eugenic operation in accordance with the provisions of paragraph 1 of the preceding Article, has an objection to such decision, he may apply to the Central Eugenic Protection Commission for review of his case within two weeks from the date that he received the notification under the same paragraph.

2. The spouse, the person in parental right, the guardian or the assistant of the person in respect of whom it has been decided to exercise eugenic operation under the preceding paragraph, may apply for review.

3. The application under the preceding two paragraphs shall be made through the Metropolitan, Hokkaido or Prefectural Eugenic Protection Commission which has decided that the eugenic operation should be performed.

In this case, the Metropolitan, Hokkaido or Prefectural Eugenic Protection Commission shall transmit the application accompanied by the statement of its opinion which may be deemed pertinent.

(Review for eugenic operation)

Article 7. When the Central Eugenic Protection Commission has accepted an application for review under the preceding Article, the Commission shall notify the physician who takes charge of operation to that effect

and, on the other hand, shall judge afresh whether the exercise of eugenic operation is reasonable or not, and communicate the result to the applicant for review, the person who shall undergo eugenic operation, the Metropolitan, Hokkaido or Prefectural Eugenic Protection Commission, and the physician concerned.

(Presentation of opinion in connection with examination)

Article 8. The applicant mentioned in the provisions of Article 4, the person to undergo eugenic operation, and the spouse, the person in parental right, the guardian or the assistant may present to the prefectural Eugenic Protection Commission the fact or opinion by means of the written or verbal statement in connection with the examination provided for in Article 5, paragraph 1, or review provided for in the preceding Article.

(Institution of suit)

Article 9. A person who does not consent to the decision made by the Central Eugenic Protection Commission may institute a suit within a month after he was notified of the decision provided in Article 7.

(Carrying out of eugenic operation)

Article 10. When no objection has been raised to the decision that the eugenic operation should properly be carried out, or when the decision or the court judgement thereon has become final and conclusive the physician under the provision of Article 5, paragraph 2, shall carry out the eugenic operation.

(Defrayment of operation expenses out of national treasury)

Article 11. The expenses to be incurred by carrying out the eugenic operation in accordance with the provisions of the preceding Article shall be provided by the Metropolis, Hokkaido or the prefecture, as prescribed by Cabinet Order.

The expenses under the preceding paragraph shall be defrayed out of the national treasury.

(Eugenic operation to mental patients, etc.)

Article 12. In case there has been obtained the consent of the person under obligation to protect another under Article 20 (where the guardian, the spouse, the person having parental power or the person under obligation to sustain another has become the person to protect) or Article 21 (where the Mayor of city or headman of town or village has become the person under obligation to protect) of the Mental Hygiene Law (Law No. 123 of 1950), with respect to a person suffering from psychopaths or mental deficiency other than the hereditary ones enumerated in item 1 or 2 in the Annexed List, the physician may apply to the Metropolitan, Hokkaido or Prefectural Eugenic Protection Commission for investigation of reasonableness in connection with the eugenic operation.

Article 13. The Metropolitan, Hokkaido or Prefectural Eugenic Protection Commission shall, in case an application has been made under the preceding Article, investigate whether the person in question is suffering from the psychosis or mental deficiency under the same Article and whether the exercise of eugenic protection shall be necessary for his protection, determine the reasonableness for the eugenic protection, and inform the applicant and the consenter under the preceding Article of the decision.

2. The physician may, in case a decision has been taken that it is proper to perform eugenic operation under the preceding paragraph, perform the eugenic operation.

Chapter III: *Protection of the Mother's Life and Health.*

(Artificial interruption of pregnancy at physician's discretion)

Article 14. The physician designated by the Medical Association which is a corporate juridical body established in the prefectural district as a unit (hereinafter called the 'designated physician'), may exercise artificial interruption of pregnancy, at his

discretion, to the person who falls under any of the following items, with the consent of the person in question or the spouse.

(1) A person or the spouse who has psychosis, mental deficiency, psychopathias, hereditary bodily disease or hereditary malformation;

(2) A relative in blood within the 4th degree of consanguinity of a person or the spouse who has hereditary psychosis, hereditary mental deficiency, hereditary psychopathias, hereditary bodil disease or hereditary malformation;

(3) A person or the spouse who is suffering from leprosy;

(4) A mother whose health may be affected seriously by continuation of pregnancy or by delivery from the physical or economic viewpoint;

(5) A person who has conceived by being fornicated by violence or threat or while incapacitated to resist or refuse.

2. With reference to the consent under the preceding paragraph, the sole consent of the person in question shall suffice if the spouse is unascertainable, or if the spouse fails to declare his or her intention, or if no spouse remains after conception.

3. If the person who shall undergo the operation for artificial interruption of pregnancy is insane or feeble-minded, the consent of the person under obligation to protect another under Article 20 of the Mental Hygiene Law (where the guardian, the spouse, the person having parental power or the person under obligation to protect another) or under Article 21 of the same law (where the Mayor of city, town or village becomes the person under obligation to protect another) may be regarded as that of the person in question.

(Practical Guidance in Contraception)

Article 15. Practical guidance in contraception by means of contraceptive instruments designated by the Minister of Health and Welfare for the use of women shall not be given as vocation by a person other

than a physician, unless he is not designated by the Metropolitan, Hokkaido or Prefectural governor.

However, the act of inserting a contraceptive instrument in the cavity of the uterus shall not be performed by any person other than a physician.

2. The person who may gain designation of the Metroplitan, Hokkaido or prefectural governor under the preceding paragraph shall be a midwife, a public health nurse or a nurse who has completed the course sanctioned by the Metropolitan, Hokkaido or prefectural governor in accordance with the standards prescribed by the Minister of Health and Welfare.

3. In addition to matters provided for in the preceding two paragraphs, necessary matters in connection with the designation or sanction by the Metropolitan, Hokkaido or prefectural governor, shall be prescribed by Cabinet Order.

Chapter IV: *Eugenic Protection Commission*
(The Eugenic Protection Commission)

Article 16. The Eugenic Protection Commission shall be established in order to investigate reasonableness in connection with the eugenic operation and to handle other matters required for eugenic protection provided by this Law.

(Organisation and powers).

Article 17. The Eugenic Protection Commission shall be composed of the Central Eugenic Protection Commission and the prefectural Eugenic Protection Commission.

2. The Central Eugenic Protection Commission shall principally deal with the business of review as to reasonableness of eugenic operation and other necessary matters on eugenic protection provided by this Law, under the supervision of the Minister of Health and Welfare.

3. The Prefectural Eugenic Protection Commission to be established respectively for the Metropolis, Hokkaido, and each prefecture, under the supervision

of the Metropolis, Hakkaido or prefectural governor, shall investigate reasonableness of eugenic operation, (Composition).

Article 18. The Central Eugenic Protection Commission shall consist of not more than twenty-five members, and the Metropolitan, Hokkaido or prefectural Eugenic Protection Commission of not more than ten members.

2. Each Eugenic Protection Commission may, in case of special necessity, have extraordinary members.

3. The members and the extraordinary members of the Eugenic Protection Commission shall be appointed from among physicians, Welfare Commissioners, judges, prosecutors, officials of the government and municipal office concerned or those of learning and experience, by the Minister of Health and Welfare in the case of Central Eugenic Protection Commission, and by the Governor concerned in the case of the Metropolitan, Hokkaido or prefectural Eugenic Protection Commission respectively.

4. Each Eugenic Protection Commission shall have a chairman selected from among its own members.

5. The provisions of Article 203 (Remuneration and reimbursement of expenses) of the Local Autonomy Law (Law No. 67 of 1947) shall apply with the necessary modifications to the remuneration of the members of the prefectural Eugenic Protection Commission and reimbursement of expenses.

(Delegated business).

Article 19. The term of office of the Commission members, the duties of the chairman and other necessary matters concerning the management of the Eugenic Protection Commission, except those provided for in this Law, shall be prescribed by order.

Chapter V: *Eugenic Protection Consultation Office*

(The Eugenic Protection Consultation Office)

Article 20. There shall be set up a Eugenic Protection Consultation Office in order to give advice in

response to consultation on marriage affairs from the viewpoint of eugenic protection, ensure the dissemination and improvement of the essential knowledge of heredity and other aspects of eugenic protection, and simultaneously popularize and give guidance in the adequate method of contraception.

(Establishment)

Article 21. The Metropolis, Hokkaido and prefectures as well as cities having a Health Centre shall set up their respective Eugenic Protection Consultation Offices.

2. The Eugenic Protection Consultation Office under the preceding paragraph may be attached to the Health Centre.

3. The Metropolis, Hokkaido and prefectures as well as cities having a Health Centre shall, when they seek to set up their respective Eugenic Protection Consultation Offices, obtain the prior approval of the Minister of Health and Welfare.

4. The State may grant subsidies for part of the expenses for establishment and operation of the Eugenic Protection Consultation Office under paragraph 1 above, as prescribed by Cabinet Order.

(Approval of Establishment)

Article 22. A person other than the State, the Metropolis, Hokkaido or prefectures as well as cities with a health centre shall, in seeking to establish the Eugenic Protection Consultation Office, obtain the approval of the Minister of Health and Welfare.

2. The Eugenic Protection Consultation Office mentioned in the preceding paragraph must have a physician in accordance with the standard set by the Minister of Health and Welfare and have equipments necessary for examination and other matters.

3. The Minister of Health and Welfare may, in case the Eugenic Protection Consultation Office under paragraph 1 has ceased to conform with the standard under the preceding paragraph, cancel his approval.

In such cases, the Minister must, for affording the founder of Eugenic Protection Consultation Office an opportunity for explanation of his case, cause a competent official to make inquiry and hearing in respect of the founder.

(Exclusive use of its name).

Article 23. No office other than the one established by this Law shall use in its name any letters representing the Eugenic Protection Consultation Office or similar letters.

(Delegated business)

Article 24. Necessary matters concerning the Eugenic Protection Consultation Offices, excepting those provided by this Law, shall be prescribed by order.

Chapter VI: *Notification, Prohibition and others*

(Notification)

Article 25. The physician or the designated physician who has carried out the eugenic operation or artificial interruption of pregnancy in accordance with the provisions of Article 3 paragraph 1, Article 10, Article 13 paragraph 2 or Article 14 paragraph 1, shall send to the Metropolitan, Hokkaido or prefectural governor the duly arranged records of such operation for the month accompanied the statement of reasons.

(Notice)

Article 26. In cases where a person who has undergone a eugenic operation, intends to get married, shall notify the partner to that effect.

(Secrecy of the operation)

Article 27. Any members and any extraordinary member of the Eugenic Protection Commission, or any official who has engaged in examination or actual business of eugenic operation or artificial interruption of pregnancy, or any personnel of the Eugenic Protection Consultation office shall not break any secrets that he has learned in the performance of his duties. The same shall also apply in cases where he has retired from his office.

(Prohibition)

Article 28. The operation or the Rontgen rays radiation in order to incapacitate a person for reproduction shall not be conducted without appropriate reason, except in the cases falling under the provisions of this Law.

(Contravention of Article 15, paragraph 1)

Article 29. A person who has contravened the provisions of Article 15, paragraph 1 shall be punished with a fine not exceeding ten thousand yen.

(Contravention of Article 22)

Article 30. A person who, in contravention of the provisions of Article 22, has established the Eugenic Protection Consultation Office without the approval of the Minister of Health and Welfare shall be punished with a fine of not more than fifty thousand yen.

(Contravention of Article 23)

Article 31. A person who, in contravention of the provisions of Article 23, has used the letters representing the Eugenic Protection Consultation Office or similar letters as a pellation shall be punished with a non-penal fine not more than ten thousand yen.

(Contravention of Article 25)

Article 32. A person who, in contravention of the provisions of Article 25, has failed to present report to the competent authorities or has made a false report, shall be punished with a fine more than ten thousand yen.

(Contravention to the Article 27)

Article 33. A person who, in contravention of the provision of Article 27, has failed to keep another's secrets without appropriate reasons, shall be punished with penal servitude for not more than six months or a fine not more than fifty thousand yen.

(Contravention of Article 28)

Article 34. A person who, in contravention of the provisions of Article 28, has exercised the eugenic operation, shall be punished with penal servitude for not more than one year or a fine not more than one hundred thousand yen. If the person has thereby

caused death to another, he shall be liable to penal servitude for not more than three years.

SUPPLEMENTARY PROVISIONS

(The effective date)

Article 35. This Law shall come into force as from the date when the period of 60 days shall have elapsed counting from the date of its promulgation.

(Abrogation of relevant laws)

Article 36. The National Eugenic Law (Law No. 107 of 1940) shall be abrogated.

(Continuance of force of penal provisions)

Article 37. With regard to application of penal provisions to the offence prior to the enforcement of this Law, the Law mentioned in the preceding paragraph shall remain in force even after the enforcement of this Law.

(Exception to notification)

Article 38. The provisions of Article 25 shall not apply in its scope to the cases where report has been made under Ministry of Health and Welfare Ordinance No. 42 of 1946 (Regulations concerning notification of stillbirth).

(Medicines necessary for giving guidance in contraception).

Article 39. A person who has been designated by the Metropolitan, Hokkaido or prefactural governor under the provisions of Article 15, paragraph 1, may sell to a person who shall receive practical guidance of same solely such medicines as may be required for contraception and designated by the Minister of Health and Welfare, until not later than the 31st of July, 1965, regardless of the provisions of Article 29, paragraph 1 and Article 44, item 8 of the Pharmaceutical Affairs Law (Law No. 197 of 1948).

2. In case a person designated by the Metropolitan, Hokkaido or prefectural governor under Article 15, paragraph 1 comes under one of the following items, the same governor may cancel such designation.

(1) In case the provisions of Article 33 of the Pharmaceutical Affairs Law apply to the medicines designated by the Minister of Health and Welfare under the provisions of the preceding paragraph, the same medicines which have failed to stand a test under the same Article have been sold;

(2) Medicines other than those designated by the Minister of Health and Welfare have been sold on business;

(3) In addition to the cases under the preceding items, medicines have been sold on business to a person other than those given practical guidance in contraception.

3. The Metropolitan, Hokkaido or prefectural governor seeking to take the action provided for in the preceding paragraph shall notify the person subject to such action of the grounds of action as well as of the time and place of hearing at least one week in advance of the date set for the hearing and shall make hearing by requesting the presence of the person or his representative.

However, the same governor may, in case the person subject to such action or his representative has failed to attend the hearing, take the action under the preceding paragraph without holding a hearing.

Annexed List.

1. Hereditary psychosis
   Schizophernia
   Manic-depressive psychosis
   Epilepsy

2. Hereditary mental deficiency.

3. Remarkable hereditary psychopathia
   Remarkable abnormal sexual desire
   Remarkable criminal inclination

4. Remarkable bodily illness
   Chorea progressiva
   Hereditary spinal ataxia
   Hereditary cerebellar ataxia
   Progressive muscular atrophy

Dystrophia musculorum progressiva
Myotonia
Congenital musculorum Atonia
Congenital cartilaginous malgrowth
Leukosis
Ichthyosis
Multiple soft neurofibroma
Sclerosis nodosum
Edidermolysis bullosa hereditaria
Congenital porphyrin urine
Keratoma palmare at plantare hereditarium
Atrophia nervi optici hereditarium
Pigmentdegenetation of retina
Achromatopsia
Congenital nystagmus
Blue sclera
Hereditary dysacousia or deaf
Hemophilia

5. Intense hereditary malformation
Rupture of hand, Rupture of foot
Congenital defect of bone

Law for Partial Amendment to the Eugenic Protection Law (Amendment of April 21, 1960).

The Eugenic Protection Law (Law No. 156 of 1948) shall be partially amended as follows:

Article II shall be amended as follows:

Article II. (Defrayment of the expense).

The expense to be incurred by carrying out the eugenic operation under the provisions of the preceding paragraph shall be borne by the Metropolis, Hokkaido or the Prefecture, as prescribed by Cabinet Order.

2. The expense under the preceding paragraph shall be provided by the national treasury.

In Article 39, paragraph 1, 'the 31st of July, 1960' shall be amended as 'the 31st of July, 1965.'

SUPPLEMENTARY PROVISIONS:

This Law shall come into force as from the date of its promulgation.

However, the provisions of Article 11 of the Eugenic Protection Law after amendment shall apply to the expense for the eugenic operation which shall be performed, after the 1st of April, 1960, in accordance with Article 10 of the same Law, whereas, in the case of the expense for the eugenic operation which shall be performed, prior to the same date, in accordance with the same Article, the former examples shall be followed.

Yoshio Watanabe, Minister of Health and Welfare.

Nobusuke Kishi, Prime Minister.

DENMARK

The first comprehensive legislation on abortion was adopted in Denmark in the late 1930s'. Abortion Laws were liberalized in 1956.

The following is a statement of Act No. 177 of June 23, 1956:

SECTION 1

Sub-Section 1. A woman may have her pregnancy interrupted in the following cases:

(1) When the interruption of the pregnancy is necessary to avert grave danger to the woman's life or health. In evaluating this danger, due consideration shall be given to all relevant circumstances, including those conditions under which the women must live, and not only to her physical and psychic health, but also to any condition of physical or psychic weakness, present or threatening.

(2) When the woman has been made pregnant under such circumstances as are dealt with in the Civil Criminal Code of April 15, 1930, Section 210, or Section 210 cfr. Section 212, as well as when the pregnancy is the result of a violation of the woman's sexual freedom under such circumstances as are referred to in Sections 216-223 of the Criminal Code, or in the aforementioned Sections as related to Section 224.

(3) When there is imminent danger that the child, as a result of a hereditary taint or due to injuries or illness suffered in the fatal stage, might suffer

from insanity, mental deficiency, other grave mental derangement, epilepsy or serious and incurable abnormality or physical disease.

(4) When, in very special cases, it is presumed that the women will be unfit to take proper care of her child due to serious mental or physical defects or other medically indicated conditions.

Sub-Section 2. Legal abortion in the cases referred to in Section 1, Sub-Section 1, Clauses 2-4 may normally not be carried out after the end of the 16th week of pregnancy.

Sub-Section 3. If the pregnancy is the result of a violation of the woman's sexual freedom under circumstances referred to in the Criminal Code's Section 216, Section 217, Sub-Section 2; Sections 218 and 221, or these sections as related to Section 224, legal abortion may not be carried out unless the crime has been reported to the police and that such report - having been duly investigated by the police - has not been dismissed as false.

Sub-section 4. If legal abortion is to be carried out because of the hereditary taint referred to in Section 1, Sub-section 1, Clause 3, and these genes originate from the woman, sterilization of the woman may be carried out in connection with the interruption of the pregnancy without special permission, provided that the woman agrees to it and no special reasons argue against it. The provisions of Section 2, Subsections 1 and 3, shall apply in such cases.

SECTION 2

Legal abortion may not, unless justified by grave danger to the woman's life or health as the result of illness, be carried out until the following conditions have been complied with:

(1) If the woman is under 18 years of age or has been declared incapable of managing her own affairs, the consent of those who hold parental custody of her or of her guardian shall be obtained unless decisive circumstances argue against it.

(2) If the woman, due to unsoundness of mind, mental deficiency or other causes is unable to understand the consequences of the operation, the petition for legal abortion may be made by a special guardian appointed thereto by the Social Welfare Committee or, if she is under public care in a State Institution or other Approved Institution as provided by Section 67 of the Social Welfare Act, by the Director of the institution.

(3) If the woman is married and cohabiting with her husband, the latter shall be given an opportunity to make a statement, unless special circumstances argue against it.

SECTION 3

Sub-section 1. Legal abortion may only be carried out by an authorized medical officer in a State or Municipal Hospital, or in a private hospital receiving public grants or to which patients are sent at public expense.

Sub-section 2. If the danger to the woman's life or health in the cases referred to in Section 1, Subsection 1, is due to illness, and this has been established in one of the hospitals mentioned in Subsection 1 above, the Chief Physician of that hospital may take the decision on the necessity for the interruption of pregnancy.

Sub-section 3. Should a woman in other cases desire the interruption of her pregnancy, she must apply to a Mothers Aid Centre for a legal abortion. The Mothers Aid Centre will establish whether the conditions, set forth in Sections 1 and 2, for legal abortion have been fulfilled, and in the course of so doing should ordinarily obtain information from the woman's usual medical man. Further the Mothers Aid Centre should consult with a specialist in medicine to the required extent, obtain a statement from the Institute of Genetic Biology or have the woman admitted to a hospital or a suitable home for observation or treatment. Decision as to whether legal abortion may be carried out will then be made in compliance with Section 6A, Sub-section 1 of Act No. 119 of March 15, 1939 concerning Mothers Aid Centres,

as amended by Act No. 176 of June 23, 1956, by a Joint Council consisting of two physicians and the director of the Mothers Aid Centre or some other merber of the staff of the Centre with similar train ing.

Sub-section 4. When decision to permit legal abortion has been made, the woman shall on request be admitted to the hospital (hospital department) under which she belongs. The chief physician of the hospital (hospital department) shall be entitled to submit the question of carrying out the operation to the Council referred to in Section 6 A, sub-section 3, of Act No. 119 of March 15, 1939 concerning Mothers Aid Centres, as amended by Act No. 176 of June 23, 1966, for guidance. Should the chief physician refuse to carry out the operation, the patient may be sent to another hospital, if necessary by order of the Mothers Aid Centre in question.

SECTION 4

The medical officers mentioned in Section 3 as well as the staffs of the hospitals referred to in Section 3 are under obligation, in accordance with the provisions of Section 263 cfr. Section 275 of the Civil Criminal Code, to observe professional secrecy concerning the matters pertaining to private life of which they may gain knowledge or which they may surmise in connection with the question of legal abortion, unless they are by law under obligation to make a statement, or unless they act in the warranted service of the public interest or of their own interrests or of those of others.

SECTION 5

He who, for use in making decisions as to whether the conditions for legal abortion have been fulfilled, testifies to something of which he has no knowledge, or who wilfully gives erroneous information, is liable to penalties in accordance with the provisions of Section 162 of the Civil Criminal Code.

SECTION 6

Sub-section 1. A woman who interrupts her own pregnancy, or who has it interrupted by a person who is not a licenced medical practitioner, is liable to punishment by fine even though the conditions prescribed in Section 1 may have been fulfilled. If she herself interrupts her pregnancy, or if she has it interrupted, knowing that the conditions for legal abortion do not exist, the punishment is imprisonment for upto 3 months. Under special and extenuating circumstances sentence may be remitted.

Sub-section 2. Should, in the course of proceedings instituted for the prosecution of illegal abortion by a woman who has become pregnant out of wedlock or her helpers, or of attempted illegal abortion by her helpers, such information come to light that it must be held to be established who has made her pregnant, that person shall be liable to a prison sentence of upto 1 year, under extenuating circumstances be liable to imprisonment, if it be proved that he, despite the fact that the woman has appealed to him for personal or economic assistance, has failed to give her such support and aid as would be reasonable in the circumstances, and that this omission has materially influenced her decision to interrupt her pregnancy.

Sub-section 3. A licenced medical practitioner who interrupts a pregnancy or gives assistance thereto, knowing that the conditions for legal abortion as set forth in Section 1 hereof do not exist, is liable to a prison sentence of upto 2 years. Under aggravating circumstances, especially when the act has led to the death of the woman or has caused appreciable injury to her body or health, the penalty shall be upto 4 years in jail. If legal abortion in accordance with Section 1 is performed without the statutory requirements of Sections 2 and 3 having been fulfilled, the penalty shall be imprisonment or in extenuating circumstances a fine. If an abortion is performed without the consent of the woman, the penalty is a sentence of upto 12 years in jail.

Sub-section 4. He who, without being a licenced medical practitioner, shall interrupt a pregnancy or

give assistance thereto, is liable to a penalty of upto 4 years in jail. In aggravating circumstances, especially when the act has been performed for profit, or if it has led to the death of the woman or has caused appreciable injury to her body and health, the penalty shall be upto 8 years in jail. In case of the offence being repeated, or if the offender has acted without the consent of the woman, the penalty is upto 12 years in jail.

Sub-section 5. The above penalties do not apply to offences committed through negligence.

SECTION 7

He who, by duress as defined by the Civil Criminal Code's Section 260, or by threats of economic loss or of injury to her family or social standing, or by promise of reward, induces a pregnant woman desirous of completing her pregnancy to interrupt that pregnancy, even though legal abortion may be performed in accordance with the provisions set forth for it, is liable to a term of upto 2 years in jail; however, the penalty shall be upto 4 years in jail if the interruption of the pregnancy is performed by a person who is not licenced medical practitioner.

SECTION 8

Liability to penalty for the offences dealt with in Sections 6 and 7 become statute-barred in accordance with the provisions of Sections 93 and 94 of the Civil Criminal Code of April 15, 1930; Indictment pursuant to Section 6, Sub-section 1, cannot, however, take place if more than one year has passed after the abortion has been induced.

SECTION 9

Sub-Section 1. The expense in connection with legal abortion shall be borne by the person in question. If she has not means to do so, the expense will be defrayed by the Treasury, or, if she is under the care of one of the Welfare Institutions mentioned in Section 66 of Act No.181 of May 20, 1933 by the Institution in question.

Sub-section 2. In the case mentioned in Section 3, Sub-section 4, last sentence, such part of the expense which would have been incurred in connection with hospitalization and operation in the hospital in the woman's own parish of domicile will be defrayed in accordance with Sub-section 1 above. The Minister of Home Affairs can stipulate rules to the effect that the expense incidental to the woman's hospitalization in that hospital where the operation is carried out shall be refunded in part or in toto by the hospital in the woman's own parish of domicile.

Sub-section 3. The respective Mothers Aid Centre may, if special considerations for the woman argue in favour of it, sanction that the operation be carried out in a hospital away from the woman's parish of domicile. In such case the expense incurred thereby will be defrayed in accordance with Sub-section 1 above.

FRANCE

In France, therapeutic abortion is regulated by the code de la Santa Publique. According to the decree of May 11, 1955, a physician may interrupt a pregnancy only if the life of the mother is gravely threatened. He must consult with two other doctors one of whom must be selected from a list of experts attached to the civil courts. These doctors must certify that the danger to the mother's life cannot be averted in any other way and a copy of the certification must be sent to the president of the departmental council of physicians.

NORWAY

Norway passed a liberal abortion law in 1963. The law recognizes a medical indication, a eugenic indication and a humanitarian (ethical, juridical) indication. The scope of the medical indication has been explicitly broadened to include considerations of a mixed socio-medical character. The more recently amended Norwegian statute includes damage or disease acquired during intra-uterine life. In Norway the administration is relatively decentralized. Most legal abortions are approved by two physicians one of whom

must be a Gynaecologist or surgeon on the permanent staff of a hcspital.

The bill of November 11th,1960 (with amendments) is presented in detail in the following paragraphs:

Par. 1. Woman with child may be permitted to have legal abortion:

1. When it is obvious that it will endanger the woman's life or health. When examining one must see if the woman is entitled to have organic or psychic sickness, and also pay attention to living conditions and other things which can make her sick or result in a physical or psychic break.
2. When it is serious danger for the fact that:
   (a) the child may inherit something from the parents, or
   (b) the woman is sick while being pregnant, or
   (c) there are injuries to the embryo which might lead to that the child will have serious illness or have a bodily or mentally defect.
3. When there is reason to believe that the woman became pregnant because of heavy violation, as circumstances mentioned in Criminal Law Par. 207, 208 and also if the woman is mentally sick or has very low mental capacity.

Par. 2. If the woman is more than three months pregnant there must not be done any surgical operation, except in very special cases.

Par. 3. The abortion must only find place in recognised hospitals. Outside hospitals where there is a surgical or gynaecological chief physician, the operation must be done only by a specialist in surgery or gynaecology. The Department may acknowledge another doctor, if the medical conditions in the district is rather difficult - and under certain other circumstances.

Par. 4. The claim for abortion shall come from the woman herself.. If she is below 21 or if she has

very low mental capacity, one of the parents or the guardian or the social guardian shall come forward with their view, if possible.

If the woman is mentally sick or if she has very low capacity, the claim has to come from the parents or from the guardian. If it is appointed a social guardian or a third party, the claim shall come from this person. If it is reason to believe that the woman herself realises what the operation might lead to, the operation cannot be performed without her consent.

If the woman is under-age or as mentioned above in 2, and 3, no parents alive, or a guardian, or these people are prevented from putting up the claim or from telling their view - or - if the persons mentioned are not qualified for this the City Council or the County Council shall appoint a social guardian if one of the physicians (Par.6) demands one. If the physicians have reason to believe that the parents are not qualified, the guardian must be informed about this so that he can send a complaint to the County Doctor, 3 days after he was informed. If the woman is married and lives with her husband, the husband shall be consulted if there are no special reasons for not consulting him.

Par. 5. Before it is decided whether there is going to be performed an operation or not, a doctor must claim that the woman is admitted to the hospital and that there is a written declaration about the reasons. Such a claim is not necessary if the woman already is in hospital before the claim for abortion proposed. Under certain circumstances the Department can decide for some private hospitals that there shall be no hinder for the fact that the physician who shall perform the operation can claim admittance for the woman concerned.

If it is reason to believe that woman's living conditions might influence the decision, her living conditions must be investigated before the decision is taken. The investigation is taken by one of the physicians who is taking part in the decision, Par. 6, if this is not possible; in other safe and secure way. In any case the woman shall be told the help she will get while being pregnant; as to money etc. If the

claim for abortion set up because of the fact that the woman got pregnant under circumstances mentioned in Criminal Law Par. 192-194, and that the violation is not reported to the Public Prosecution, the claim cannot be approved of if there are not any special reasons for this. The physicians who are going to take the decision as to Par.6, can claim that other doctors or civil servants shall give all information which might seem to influence the decision. No attention is paid to professional secrecy.

Par. 6. The decision is taken by two physicians. One is appointed by the County Doctor (in Oslo and Bergen the Chief Medical Officer) and he must not be in the hospital where the abortion is to take place. If the operation finds place in the surgical or in the gynaecologicaldepartment of the hospital, the Chief Physician will be the other one, or his assistant. In other cases the other party is the one who is going to have the operation.

The decision, approved or not, shall be in written form and the reasons must be told.

Par. 7. Regardless to Par. 3 part two, and Par. 5 part one and to Par. 6 first part, the Department may allow the District Doctor in remote districts to take the decision as to an operation or not, when it is believed that it would cause damage to the woman if the mentioned par. are followed. The operation can be performed regardless to all parts of this law, if there is serious danger for her life or for her health if giving birth to the child.

Par. 8. If the claim for abortion is refused, the District Doctor - when received an application from the women's doctors, - see to that she will be admitted to an other hospital where her case can be tried once more, then before other doctors.

Par. 9. An operation can only find place when the District Doctor has agreed to:

(a) When the woman is under age or has low mental capacity or the guardian is against the operation if no guardian is appointed or if her parents or the guardian has not consented.

(b) When it has been impossible to get the woman's consent Par. 4 part two.

(c) When the woman and her husband are against the operation.

Par. 10. People dealing with matters falling within this law are bound to secrecy.

Para. 11. The King can bring about other regulations for the fulfilment of this law.

The regulations can contain rules concerning compensation to the doctor, book-keeping and reports concerning decisions and operations made according to this law.

Par. 12. If anyone makes abortion or helps thereto to make abortion contrary to the rules and regulations of this law, he can be punished by fine or prison upto three months, if the offence does not deserve greater punishment. Each one desiring abortion and who gives false information, written or spoken, or anybody who breaks the secrecy par. 10, will be punished equally. This also includes the one who helps or is being helped in breaking the law.

Par. 13. This law will be in force from the day the King decides.

SWEDEN

The first comprehensive law on abortion was adopted in Sweden in late 1930s and was further liberalized after World War II. In Sweden the range of acceptable indications includes medical, eugenic, medico-social and humanitarian considerations. Although under eugenic indications the Swedish law mentions the transmission of mental diseases, mental deficiency, and other severe illness or defect, the Swedish Medical Board has authorized the interruption of pregnancy or medical indication in many cases of German measles and in at least one celebrated case of thalidomide poisoning.

Regarding the administrative machinery implementing abortions the procedure is most centralized

in Sweden where about 85 percent of all legal abortions are authorized by the Royal Medical Board in Stockholm, which makes its decision on the basis of written report by the physician who has examined the woman seeking abortion. The remaining 15 percent are performed on the authority of a certificate signed by two physicians.

Swedish Laws on Abortion - 1962

Abortion. The law on abortion of 1938 was amended in 1941, 1942 and 1946. Under the law as it now stands, abortion is permitted

(1) if due to a woman's illness, physical defect or weakness childbirth would entail serious danger to her life or health, i.e. on *medical reasons;*

(2) if with regard to a woman's conditions of life and other circumstances there is reason to assume that her physical or psychic strength would be seriously reduced through child-birth and child care, i.e. on *medico-social reasons;* (1946 Amendment).

(3) if a woman has become pregnant as the result of rape, other criminal coercion or incestuous sexual intercourse, if she is insane or an imbecile, or under 15 years of age at the time of the fertilizing coition, i.e. on *humanitarian reasons;*

(4) if there is reason to assume that the woman or the father of the expected child would transmit to their offspring hereditary insanity, imbecility, a serious disease or a serious physical handicap; i.e. on *eugenic reasons.* An abortion for the reason of any such hereditary defect in the mother is contingent on sterilization simultaneously with the abortion, unless sterilization appears risky or unnecessary (e.g. with regard to the woman's advanced age or because she is to be permanently committed to an institution). In other words, sterilization is laid down as a condition of abortion, the subject being under the necessity of taking both or foregoing the abortion.

An abortion for other reasons than disease or a physical defect in the woman (i.e. the most cogent medical reasons) may not be performed after the

twentieth week of pregnancy. The National Board of Health may make exceptions and authorize the performance of the operation before the end of the twentyfourth week of pregnancy.

Abortion may be authorised.

(a) by the National Board of Health on any of the reasons stipulated in the law. The National Board's authorization is necessary.

(1) if abortion is sought on eugenic reasons (sub.4);
(2) if the woman lacks legal capacity, except in case of an emergency;

(b) by two doctors (one of them a medical officer) except in cases where the National Board's authorization is required;

(c) by the licensed practitioner performing the operation in case of an emergency, i.e. if pregnancy has to be interrupted due to a disease or a physical defect in the woman and if the procedures under (a) or (b) above could not be followed without harmful consequences due to the delay or other circumstances involved. (Article 7 or the law, the so-called emergency article).

In the instructions, the National Board of Health points out that cases in which abortion is justified on medical reasons and on eugenic reasons in the mother should be referred to the Board for determination as to whether abortion should be made contingent on simultaneous sterilization,

An application for abortion may be made

(a) concerning a woman having legal capacity, only by the woman herself;

(b) concerning a woman lacking legal capacity

(1) by the woman herself

(2) by her guardian, if the woman is under age or has been placed under guardianship

(3) by the doctor or the manager of an institution, on behalf of a woman committed to that institution.

UNITED KINGDOM

In the United Kingdom, the applicable statute is Section 58 of the Offences Against the Person Act of 1861 which makes 'unlawfully' induced abortion a felony punishable by life imprisonment. The Act does not define 'unlawful' and thus makes no provision for the therapeutic interruption of pregnancy. However, in 1938, in the famous case of Rex vs. Bourne, Mr. Justice Machnaghten held it reasonable to read into the law an exception stipulated in the Infant Life (Preservation) Act of 1929 that abortion need not be unlawful if done in good faith to save the mother's life. 'If the doctor is of the opinion..... that the probable consequences.....will be to make the woman a physical and mental wreck, the jury is quite entitled to take the view that the doctor.....is operating for the purpose of preserving the life of the mother. Bourne, who had aborted a young girl who was the victim of a rape attack, was acquitted, and a legal precedent was set.

Since 1965 legislation has been introduced in both Houses of Parliament designed to make legal abortion available in a wider range of situations than had been the case up to now. A Medical termination of Pregnancy Bill has already passed the Lords and was carried in the Commons on second reading by a huge majority - 223 votes to 23. The bill is now in committee and may well become law within a few months.

The bill would legalize abortion on four grounds:

(a) When the continuance of the pregnancy would involve serious risk to the life or grave injury to the health, whether physical or mental, of the pregnant woman, whether before, at, or after the birth; or

'(b) when there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped; or

'(c) that the pregnant woman's capacity as a mother will be seriously overstrained by the care of a child or of another child; or

'(d) that the pregnant woman is a defective, or became pregnant while under the age of 16, or as a result of rape.

If the Medical Termination of Pregnancy Bill is enacted without major changes, it will make British law as permissive as the laws which have been in force in Sweden and Denmark for many years.

GERMANY

Scant data or therapeutic abortion are available for a few countries. In Germany, abortion was prescribed, without any exception, by section 218 of the Penal Code of 1871 which is still the law of the land in the Federal Republic. A formal exception for abortion on medical indication was established in 1935 by section 14 of the law for the Prevention of Offspring Suffering from Hereditary Disease. While the provisions of this law relating to abortion and sterilization on eugenic grounds have been universally repealed, the provision with regard to medical indication has been retained in most of the States of the Federal Republic. In the remaining two States, abortion to save the life of the mother is permitted under a general provision of the Penal Code which condones otherwise forbidden acts if they are performed to avert a danger to 'life and limb'. The draft for a new Federal Penal Code, which has been under consideration since 1959, defines and authorizes interruption of pregnancy on medical indication.

In the territory of the German Democratic Republic, section 218 of the old Penal Code was replaced after World War II by a series of State laws under which legal abortion could be performed on medical, eugenic, and humanitarian grounds, and to some extent on social or economic grounds also. These statutes were in turn superseded in 1950 by the Law for the Protection of Mother and of Child, which permits abortion on medical and eugenic indications only.

In the Federal Republic all therapeutic abortions must be authorized by the regional Chamber of Physicians on the basis of written opinions submitted by two experts selected by the Chamber. One of these experts must be gynaecologist or obstetrician, the other a specialist in the relevant field of medicine. In the Democratic Republic the decision lies with a regional commission which includes among its members not only physicians but also representatives of the social services and quasi-official Union of German Women.

Paragraphs in the Penal Code relating to abortion; Section 218 of the Criminal Law of the Federal Republic of Germany, amendment of March 18, 1943 (Legal Gazette of the Reich I, page 169) and amended version of the Law of August 4, 1953 (Federal Legal Gazette I, page 735).

SECTION 218

(1) Any woman who destroys the fetus either in her womb or by causing an abortion or who permits another person to destroy it, is punishable by imprisonment and/or in especially serious cases by penal servitude.

(2) The attempt is punishable.

(3) Any person destroying a fetus or procuring an abortion is punishable by penal servitude, in less serious cases by imprisonment.

(4) Anyone furnishing a pregnant woman with the means or an instrument for the procuring of an abortion is punishable by imprisonment and/or in especially serious cases by penal servitude.

Special provisions regarding abortion, sterilisation and castration are contained at present also in *Section 14* of the law regarding the Prevention of Diseased Offspring in the version of the Law of June 26, 1935 (Legal Gazette of the Reich I, page 773). It reads as follows:

SECTION 14

(1) Sterilization or abortion as well as castration shall be permissible only in such cases where it

is medically indicated and where it is the only means of saving the mother's life or preserving her from grave injury to her health, the danger in both cases being immediately threatening, it shall be performed only with the permission of the person directly concerned.

Reform

(1) The bill drawn up for a Criminal Law (E 1962) contains in Sections 157 to 159 provisions relating to the procuring of an abortion if medically indicated. The suggestions made in the Bill reads as follows:-

SECTION 157

Medical interruption of Pregnancy as a means of saving the mother's life or preserving her from grave injury to her health.

(a) The procuring of an abortion shall not be punishable in accordance with Section 140 if medically indicated and if it be the only means of saving the mother's life or preserving her from grave injury to her body and/or health (Section 147 para. 2).

(2) The destruction of an unborn child in the womb is not punishable in accordance with Section 134 if it be performed by a doctor under the conditions referred to in Para 1 above.

SECTION 158

Medically unjustified interruption of Pregnancy.

(1) A doctor is punishable by imprisonment upto three years, or by arrest who, erroneously believing that the conditions of Section 157 exist, undertakes the destruction of a fetus of an unborn child.

(2) The attempt is punishable.

SECTION 159

Arbitrary interruption of Pregnancy.

(1) A doctor who, under the conditions of Section 157 or erroneously believing that the conditions exist destroys a fetus or procures a abortion without

The decision of the 1st grade commission is announced immediately. If the abortion is permitted the commission is giving an order for its realisation and an abortion can be finished immediately.

If the request for the permission for abortion is not permitted, the 1st grade commission is obliged to inform the person in question, that he can put his request for permission for abortion to the 2nd grade commission.

The decision of 1st grade commission is announced verbally, but if the person, who is requesting abortion, is absent, due to certain circumstances, the commission can inform him in writing.

If the person requests the permission for abortion from the 2nd grade commission, the 1st grade commission will send immediately to the 2nd grade commission and without any delay the report of the 1st grade commission with all documents pertaining to that matter.

The 2nd grade commission decides by the majority of votes. The decision of the 2nd grade commission is final one and it is announced according to the previous plan.

Article 10. The commissions from the article 4 of this regulation always have the written report about their work.

The report embraces the names of the members of the commission, the date of the holding of the meeting, decision with short explanations and the separate opinion of the members of the commission. The report has to embrace the note about the handing of the decisions to a party, as well as the appeal of a party if any.

Article 11. The abortion is arranged in the health institutes, where there are the 1st grade commissions.

The abortion can be arranged at some other clinic, if there are certain reasons for that, or if there are no conditions for abortion to be done at

1. the mother's consent or

2. the confirmation of the conditions referred to in Section 157 above by the medical authorities concerned.

shall be punishable by imprisonment upto three years in case No. 1 and by imprisonment upto the one year or by arrest in case No. 2 above.

(2) The act is not punishable according to Para 1, No. 1 if a delay in obtaining the consent were to jeopardize the mother's life or health (re: Section 147, Para. 2) and if there be no reason to believe that the woman would not give her consent. The act is not punishable according to Para. 1, No. 2 if in view of the danger referred to in the first sentence, above a relevant confirmation from the medical authorities concerned cannot be obtained in due course.

(3) A doctor, who erroneously believes that the conditions of Para. 2, sentence 1, exist and whose error can be proved, shall be punishable by imprisonment upto two years, by arrest or by fine. A doctor acting under the erroneous belief that the conditions of para. 2, sentence 2 above, exist and whose error can be proved, shall be punishable by arrest or by fine amounting upto 180 per diem fees.

(4) The attempt is punishable.

(5) In the case that merely the woman's consent is missing, the act shall be prosecuted only upon a relevant charge.

CZECHOSLOVAKIA

Before 1957, when the abortion laws were changed, in Czechoslovakia abortion was permitted on medical grounds only. Since 1957 every pregnant woman, whether married, unmarried or divorced has the right to apply in writing to the appropriate commission in the health service, for permission to have the pregnancy interrupted. In granting or with-holding this the commission considers not only the health of the applicant, but also her social and economic conditions.

In Czechoslovakia the law permits abortion for reasons 'worthy of special consideration' among which the Ministry of Health list :-

(1) Advanced Age

(2) Three or more children

(3) Death or disability of the husband

(4) Disruption of the family

(5) Predominant economic responsibility of the woman for the support of the family or the child and

(6) A difficult situation arising from the pregnancy of an unmarried woman

(7) Pregnancy resulting from rape or other offence.

In 1962, a new regulation restricted voluntary abortions on the grounds of multi-parity to women with three or more living children.

A Commission for the authorization of abortion, consisting of Physicians and representatives of social services have been established in Czechoslovakia.

Abortion when permitted may be carried out only in the hospitals and not later than the third month of pregnancy, if procured elsewhere and without permission, it is a penal offence.

The proceedings of the Commission are strictly confidential and full medical secrecy is observed. If performed for reasons of health it is free.

Dr. Jerie in 1953 introduced obligatory registration of abortion in the birth institutes. That year 30,566 were registered. 5/6 in Czechoslovakia countries and 1/6 in Slovakia. Dr. Jerie comments that the immense majority were kept secret. Only 303 were legally prosecuted.

In 1960 the Government abolished fees for abortion on social indications. The charges cover only part of the costs of the operation and hospitalization.

Formerly a woman could apply for an abortion on the grounds of many children, but this was clarified in 1960 to mean three children or more.

Certain conditions must be fulfilled before the abortion may be carried out, but these are leniently interpreted. In 1958 more than 80 per cent of applications for abortion were approved.

HUNGARY

A decree concerning the interruption of pregnancy was issued by the Council of Ministers in 1956. The decree declares that the interruption must be permitted by a Committee and it must be carried out always in a hospital. Such Committees act by hospitals and sit every week. The President of the Committee is a physician and its further 2 members are: the reporter of social politics from the competent District Council and a woman recommended by the Trade Union. The Committee allows the abortion (Interruption) in case of:

(1) Sickness (Illness).

(2) Such familiar circumstances, which the Committee finds to be only fair.

In case of familial or personal circumstances the Committee can allow the interruption only when the pregnancy is not older than 12 weeks and for girls mothers till age 20, when the pregnancy is not older than 18 weeks.

In case of sickness the Committee comes to a decision on the basis of an expert report given by the hospital..

The task of the Committee is - besides the decisions of interruptions enlightenment on the deleterious effects of the interruptions to the health and to convince the pregnant woman of the wrongness of her intention when her wish seems to be gratuitous.

If the pregnant woman - after all - sticks to the interruption, the Committee gives the permission to it.

The patient has to bear the hospital costs in case of interruption allowed because of other reason than sickness. In case of interruption because of sickness, the insurance company bears the hospital costs, if the pregnant woman, or her dependent obliged to keep her is a person entitled to health insurance.

POLAND

In Poland, the law of 1956 stipulated a 'difficult social situation' as an acceptable reason for the interruption of pregnancy and made the physician responsible for the determination of its existence. Since 1960, however, an oral declaration by the pregnant woman suffices to establish her 'difficult social situation'.

RUMANIA

The Rumanian People's Republic decrees as an September 25, 1957, states

Art. I : The abortion of the normal pregnancy can be done on the request of the pregnant woman.

Art. II : The abortion of the normal pregnancy can be made in State Medical Institutions, according to the regulations of the Ministry of Health and Social Welfare.

U. S. S. R.

In Eastern Europe abortion policy has undergone several major changes since November 8, 1920, when interruption of pregnancy at the request of the pregnant woman was legalised in the U. S. S. R. by a joint decree of the commissariats of Health and Justice. On June 27, 1936 another decree restricted legal abortion to a list of specified medical and eugenic indications. On November 23, 1955 the policy was once more reversed and the restrictive decree of 1936 repealed by the presidium of the Supreme Soviet.

The stated aims of this legislation in the words of the preamble to the Soviet decree are 'the limitation of the harm caused to the health of women by abortions carried out outside of hospitals' and to 'give women the possibility of deciding by themselves the question of motherhood'.

In the Soviet Union the woman has the right to decide for her own the matter of the maternity. The abortion operation is allowed to all women wishing to, but the ones having contra-indications for the operation, that is, pregnancy over 12 weeks, genetalies inflamured, infection disease such as flu, quinsy etc. high temperature irrespective of the actiology.

If necessary a woman could be operated for abortion at qualified medical institution that guarantees her the maximum innscuousness of the operation. First, a woman applies to local gynaecologist who gives her detailed and careful examination and produce an admission for the operation.

YUGOSLAVIA

Article 1: The abortion can be permitted only in cases foreseen by the Regulation and under the procedure prescribed by this Regulation.

Article 2: The execution of abortion can be permitted by agreement of a pregnant lady.

1. If it is proved by the medical examinations, that there is no possibility to save the life of a pregnant lady without abortion or to avoid heavy harm of the life and health during the pregnancy or after delivery of a child;

2. If it is proved by the medical examinations and concluded, that the child due to a illness of the parents, may be born with a heavy body or mental defects;

3. If pregnancy was caused by a crime: rape (paragraph 179 of Criminal Law) love with the helpless person (paragraph 181 of the Criminal Law), love due to usurpation of the official position (paragraph 182 of the Criminal Law), duping (paragraph 185 of the Criminal Law) or due to the sexual intercourse among the close relatives (paragraph 198 of the Criminal Law);

4. When it can be expected that the pregnant lady can come to a very heavy and difficult circumstances due to a livery of the child, so that cannot be moved in another way.

The abortion can be permitted only, if pregnancy is not more than 3 months in the cases foreseen at the above mentioned points 1 and 2 of the previous paragraph.

The abortion will not be permitted, even if there are conditions in the items 1 to the 4th of the Ist paragraph, if there is danger for the life of a pregnant lady due to abortion.

Article 3: The procedure for permission of abortion is arranged on the request of the pregnant lady. If a pregnant lady is under the age or without legal capacity the request can be made by her parents or tutor.

Article 4: The request for abortion is considered by the Ist and 2nd grade of commissions. These commissions are formed by the health institutions which have gynaecology facilities, and prior to general hospitals and children's clinics.

The Council of the district people's committee competent for the National Health affairs decides about which health organisations will form the commissions, mentioned in the previous paragraph, but in the autonomous regions of Kosovo and Metohija, the council of the regional people's committee, and in the People's Republic Monte Negro, the Republic Council for the National Health.

Article 5: The procedure before the 1st and 2nd commission is urgent one. The commission are obliged to bring the decisions in the course of 3 days, after the request for abortion has been made, and when it is not possible due, to certain justified reasons, the decision has to be brought in the course of 7 days at the latest.

Article 6: The 1st grade commission, as well as the 2nd grade commission is formed out of two medical doctors and one social worker (art. 4). One of the doctors has to be specialist for gynaecology.

The council for the affairs of the National Health nominates the members of the 1st grade commission and their assistants at the beginning of each of year and for the territory and centre of the health institution

for which the commission has been formed, and the members of the 2nd grade commission and their assistance are nominated by the Council for the National Affairs Health of the District people's committee on which territory there is a centre of the institution for which the commission has been formed.

In the Autonomous Kosovo-Metohija region the members of the 2nd grade commission and their assistance are nominated by the Council for the National Health of the regional people's committee, and in the people's Republic Monte Negro, they are nominated by the Republic Council for the National Health.

If there is no full number of the persons out of which can be formed the 2nd grade commission, but on the territory the 1st grade commission has been formed, this commission can be formed out of the members of the 1st commission with addition of another 2 members out of which one has to be specialist for gynaecology.

Article 7: The 1st grade commission examines, if there are conditions for abortion. If all details of the abortion are not known to the members of the commission or these facts are not possible to approved by the submitted documents, the commission can demand from the person who has requested abortion to give some more details about that.

If a pregnant lady is under the age or without legal capacity, the commission which is deciding about her abortion can demand the opinion from her parents or tutor before bringing any decision.

If the permission for abortion is requested out of the reasons mentioned in the article 2, item 1 point 2 of this regulation, the 1st grade commission decides about the abortion on the basis of the certificate from the public prosecutor or from the court that the criminal procedure has been started and ther are the basis for suspicion for a certain criminal deed mentioned in the above mentioned regulation.

Article 8: The 1st grade commission is bringing the decision about the permission of abortion by majority of votes, except, if some of the doctors consider that there are some medical contraindication

the health institute where the 1st grade commission has been formed.

Article 12. The abortion can be arranged even without commission and its decision if there is danger for life of the person who is waiting decision from the commission.

It is possible to end the abortion, which has been started, without decision of the commission.

In the cases mentioned in the previous items, the abortion can be arranged, namely ended at the health institute, but it can be ended outside of the institute only if it is necessary to undertake urgent medical intervention.

The Director of a health institute, or the doctor who has arranged or ended the abortion outside of a health institute, will give full report to the 1st grade commission in all cases when the abortion has been arranged or ended without its permission. This report has to be brought in the course of three days after arrangement or ending of an abortion. If there is a suspect after arrangement or ending of the abortion that there is a crime in that, the representative of the health institute or medical doctor who ended the abortion outside of the health institute, will report to the competent public prosecutor.

Article 13.

All facts which are known to the members of the commission in the course of the bringing of decision regarding abortion represent the official secret.

The report and all documents in connection with the work of the commission will be kept as the confidential documents in the archives of the health institute where the commission has been formed.

Article 14.

The commission will inform the pregnant lady about the harm of the arrangement of the abortion to her health, and will inform her how to avoid a pregnancy in future. In that purpose the commission will give to a pregnant lady the necessary information

about the advice of avoiding the pregnancy (contraception) and about the other health institutes, which she can contact for avoiding of the pregnancy.

Article 15.

The charges of the labour of the commission will be borne by the organs, which have nominated the commission.

Article 16.

A doctor who has arranged or ended the abortion without any decision of the commission, and after that does not submit any report to the competent commission in a due course (article 12) will be fined up to the amount of 50,000 Dinars.

For the administrative-penalty procedure for that infringement from the previous point the district magistrate is competent.

The director of the health institute who does not give the report to the competent commission in due course that the abortion has been arranged in that health institute without decision of the commission (article 12) will be disciplinary punished.

AUSTRALIA

Abortion is a criminal offence in both the Northern territory and the Australian territory and there are no laws specifying circumstances in which a miscarriage may be lawfully brought about.

NEW SOUTH WALES AND VICTORIA

There are no laws legalizing sterilization and abortion. However, the authorities have added the following information:

'By section 82 of the Crimes Act, 1900, a woman with child who administers a drug or other noxious thing or unlawfully uses any instrument or other means with intent to procure a miscarriage is liable to penal servitude for ten years.

'Section 83 of the same act provides that whosoever unlawfully administers to any woman whether with child or not, any drug or noxious thing or unlawfully

uses any instrument or other means with intent to procure her miscarriage shall be liable to penal servitude for ten years. However, it might be noted that an operation performed in good faith by a qualified surgeon to preserve the mother's life is not an offence (R.V. Bourne (1939) IK.B 687).

'Section 84 of the act provides that whosoever unlawfully supplies or procures any drug or noxious thing or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used with intent to procure the miscarriage of any woman whether with child or not, shall be liable to penal servitude for five years'.

SOUTH AUSTRALIA

There are no laws in existence legalizing abortion.

WESTERN AUSTRALIA

'Abortion is not permitted under the law in Western Australia except for the medical reasons hereunder.

'Therapeutic abortion may be performed where there is a serious risk to the life or future health of the woman if the pregnancy is allowed to continue. In such cases the utmost discretion is exercised and it is expected that specialized and confirmatory medical opinion be obtained before an operation is performed'.

'Spontaneous abortion, if attended by a midwife must be notified to the central health authority.'

GMGIPND-PLW-68/2/HFP/67-68-5000.

सत्यमेव जयते